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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 597.

THE UNITED STATES, PETITIONER,

vs.

WONG YOU, WONG CHEEN ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR CERTIORARI FILED MAY 13, 1911.

CERTIORARI AND RETURN FILED JULY 7, 1911.

(22672)

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POOR

a United States Circuit Court of Appeals for the Second Circuit.

WONG YOU ET AL., APPELLANTS,
vs.
THE UNITED STATES, APPELLEE.

(152224)

Transcript of record. Appeal from the District Court of the United States for the Northern District of New York.

[Printed under the direction of the clerk.]

1 The United States District Court.

THE PEOPLE OF THE U. S. OF AMERICA, PLAINTIFF,
vs.
WONG YOU, WONG CHEEN, HOEN CHEE, WONG MOW SUE, and Ju Fong.

STATE OF NEW YORK,
County of Franklin, ss:

The petition of Bertram W. Berry respectfully shows to this court upon information and belief the following:

First. That your petitioner is an attorney and counsellor at law residing and practicing in the village of Malone, and is the attorney for the relators hereinafter named and is authorized to institute this proceeding.

Second. That the relators hereinafter named are Chinese persons born in the United States of America and citizens thereof, and that they are restrained of their liberty and detained by Silas W. Horton, Chinese inspector, of the United States, at Malone, New York, in what is known as the "Detention house."

Third. That they are not committed or detained by virtue
2 of any process issued by any court of the United States or by any judge thereof, nor are they committed or detained by virtue of the final judgment or decree of any competent tribunal of civil or criminal jurisdiction, or by virtue of any execution issued upon such judgment or decree; that the names of said relators so detained are as follows:

Wong You, Wong Cheen, Hoen Chee, Wong Mow Sue, and Ju Fong.

Fourth. That the said detention is illegal and without any authority of the law whatever, and is in derogation of the rights of the said relators and is made upon alleged cause or pretense by the said Horton that as such inspector he has the sole right to determine what shall be done with the said relators and which pretense is illegal and contrary to law and without reasonable or proper cause.

Fifth. Wherefore your petitioner prays that a writ of habeas corpus issue directed to Silas Horton and to any and all other parties

in charge of said "Detention house" and who have the said relators in their custody, to produce the bodies of Wong You, Wong Cheen, Hoen Chee, Wong Mow Sue, and Ju Fong, by him or them detained, before Hon. George W. Ray, at the Federal court building, in the city of Albany, New York, and that he produce before the said judge a full and complete record of all the proceedings upon which he claims to make the said detention.

B. W. BERRY.

STATE OF NEW YORK,
County of Franklin, ss:

BERTRAM W. BERRY, being duly sworn, says: That he is the petitioner named in the foregoing petition; that the same is true to his own knowledge, except as to the matters therein stated to
3 be alleged on information and belief, and as to those matters he believes it to be true.

B. W. BERRY.

Sworn to before me this 20th day of January, 1910.

ELIZA T. CARLIN,
Notary Public.

(Endorsed:) Petition for writ of habeas corpus. Writ allowed. Returnable at Norwich, Feb. 5, 1910. Geo. W. Ray, U. S. judge. Filed Jan. 26, 1910. W. S. Doolittle, clerk.

In the name of the President of the United States of America, to Silas Horton, Chinese inspector in charge at Malone, New York:

We command you that you have the bodies of Wong You, Wong Cheen, Hoen Chee, Wong Mow Sue, and Ju Fong, by you imprisoned and detained as it is said, together with the time and cause of such imprisonment, before the District Court for the Northern District of New York, on the 5th day of February, 1910, at 10.30 o'clock in the forenoon of that day, at a term of this court appointed to be held in the chambers of the judge in the village of Norwich, New York, within said district, and have you then and there this writ.

Witness Honorable George W. Ray, United States district judge, at the city of Utica, New York, this 26th day of January, 1910.

[L. S.] W. S. DOOLITTLE, *Clerk.*

Allowed returnable at Norwich, Feb. 5, 1910.

GEO. W. RAY, *U. S. Judge.*

4 The personal appearance of the said relators is hereby waived.

B. W. BERRY.

(Endorsed:) Writ of habeas corpus. G. W. R., U. S. J. Filed Mar. 15, 1910. W. S. Doolittle, clerk.

In the District Court of the United States for the Northern District of New York.

In the matter of the application of Wong You, Wong Cheen (Wong Chun), Hoen Chee (Hom Chee), Wong Mon Sue (Wong Yip), and Ju Fong for a writ of habeas corpus.

To the Hon. George W. Ray, United States district judge for the Northern District of New York.

In obedience to the writ of habeas corpus issued in behalf of Wong You, Wong Chun, Hom Chee, Wong Yip, and Ju Fong, I certify and return:

First. That I am a sworn public officer of the United States of America, to wit, a Chinese inspector and inspector of immigration, appointed by and acting under the direction and authority of the Secretary of Commerce and Labor and the Commissioner General of Immigration of the United States, and have my official station at Malone, Franklin County, N. Y., in said district, near the border line between the United States and the Dominion of Canada, and as such officer and under such authority am in charge of the detention quarters at Malone, N. Y., in which detention quarters all Chinese persons and aliens making application to enter the United States are detained pending inquiry by the United States officers designated by law for that purpose as to the rights of the said Chinese persons or aliens to enter the said United States.

Second. That the above named Wong You, Wong Chun, and Hom Chee were taken into custody at the city of Utica on the 22d day of October, 1909, they then and there being aliens, as the undersigned is informed and believes, and they, the said Wong You, Wong Chun, Hom Chee, Wong Yip, and Ju Fong, having on the said 22d day of October, 1909, surreptitiously entered the United States at or near the town of North Burke, in the county of Franklin, in said district, from the Dominion of Canada without having produced the certificate of admission or having been examined or inspected as required by the Immigration Laws and Regulation of the United States, and that the above named Wong Yip and Ju Fong were taken into custody at Rouse Point, N. Y., on the 28th day of November, 1909, then and there being aliens as the undersigned is informed and believes, and that they, the said Wong Yip and Ju Fong, having on the said 28th day of November, 1909, surreptitiously entered the United States at or near Rouse Point, in the county of Clinton, in said district, from the Dominion of Canada, without having produced the certificate of admission or having been examined or inspected as required by the Immigration Laws and Regulations of the United States.

Third. Upon information and belief that the above named Wong You, Wong Chun, Hom Chee, Wong Yip, and Ju Fong,

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being then and there aliens, did enter the United States from a foreign territory, to wit, from the Dominion of Canada, at a point not designated as a port of entry under the Immigration Laws and Regulations of the United States.

Fourth. That afterwards and on the 25th day of October, 1909, a warrant for the arrest of the said Wong You, Wong Chun, and Hom Chee was duly issued by the Secretary of Commerce and Labor, and they, the said Wong You, Wong Chun, and Hom Chee, were duly arrested under said warrant and on the 27th day of October, 1909, they, the said Wong You, Wong Chun, and Hom Chee, were taken before the officers named therein; and that afterwards and on the 29th day of November, 1909, a warrant for the arrest of the said Wong Yip and Ju Fong was duly issued by the Secretary of Commerce and Labor, and they, the said Wong Yip and Ju Fong, were duly arrested under said warrant and on the 29th day of November, 1909, they, the said Wong Yip and Ju Fong, were taken before the officers named therein; and that they, the said Wong You, Wong Chun, and Hom Chee, and the said Wong Yip and Ju Fong were on said respective days then and there given full opportunity to show cause why they and each of them should not be deported, and the said Wong You, Wong Chun, and Hom Chee, and the said Wong Yip and Ju Fong then and there appraised of their and each of their right to be represented by counsel and to inspect all the evidence upon which the Secretary of Commerce and Labor has acted in directing said Wong You, Wong Chun, and Hom Chee, and said
7 Wong Yip and Ju Fong's arrest, and they and each of them on said respective days were then and there given an opportunity to offer evidence in their or each of their behalf, and that attached hereto and made a part hereof are the said warrants of arrest and the testimony and proceedings had and taken under said warrants of arrest as provided by law, marked, respectively, Exhibits "A," "B" and "C."

Fifth. That on said day the officers named in said warrants, to wit, John H. Clark, duly designated and empowered H. Edsell, a Chinese inspector and inspector of immigration of the United States, to conduct the inquiry and examinations of Wong You, Wong Chun, Hom Chee, Wong Yip and Ju Fong under the said warrants of arrest, and the said H. Edsell did, after due consideration find upon the evidence and testimony produced before him that the said Wong You, Wong Chun, Home Chee, Wong Yip and Ju Fong were aliens, and that they and each of them entered the United States, the said Wong You, Wong Chun and Hom Chee on or about the 22d day of October, 1909, and the said Wong Yip and Ju Fong on the 28th day of November, 1909, without inspection or examination under the immigration law, and the place of entry not being designated as a port of entry under the immigration laws, and that they and each of them were, the said Wong You, Wong Chun and Hom

POOR

Chee on the 27th day of October, 1909, and the said Wong Yip and Ju Fong on the 29th day of November, 1909, respectively, in the United States in violation of law. That the report of said hearings before the immigration officer, as aforesaid, together with the testimony taken thereon and the findings and recommendations of the officers conducting the inquiry as aforesaid, was immediately forwarded to the Secretary of Commerce and Labor, as provided by law.

Sixth. That the above named petitioners and each of them
8 were given an opportunity to inspect and make a copy of the report of the hearing, and of the findings of the officers before whom it was held, and the record and report of such hearings in the case of each of the above named petitioners was duly considered by the Acting Secretary of Commerce and Labor, and he did, after such due consideration, find that the above named petitioners, and each of them, were aliens and were in the United States, the said Wong You, Wong Chun and Hom Chee on the 18th day of October, 1909, and the said Wong Yip and Ju Fong on the 28th day of November, 1909, respectively, in violation of an act of Congress approved February 20th, 1907, to wit, the above named petitioners, and each of them, entered the United States in violation of section 36 of the above act and rule 24 of the Immigration Regulations, without being inspected under any of the various provisions of the said act and that a period of three years after such landing had not elapsed and the said Acting Secretary of Commerce and Labor did issue a warrant of deportation in the cases of Wong You, Wong Chun and Hom Chee on the 17th day of November, 1909, and in the case of Wong Yip and Ju Fong on the 4th day of January, 1910, said warrants of deportation being herewith submitted to the court for its information and guidance.

Seventh. That at the time of the issuance of the writ herein the above named Wong You, Wong Chun, Hom Chee, Wong Yip and Ju Fong were in my custody as such officer of the United States under said warrants of deportation, and the above named petitioner Hom Chee was in my custody as such officer of the United States under such warrant of arrest, awaiting the determination and
9 decision of the Secretary of Commerce and Labor upon the report of the hearing and findings of Immigration Officer Edsell, as hereinbefore set forth, and that the holding and detention of the above named petitioners, and each of them is under and by virtue of the laws and authority of the United States of America.

Eighth. The undersigned admits that the petitioner is an attorney and counsellor at law, and the undersigned, further answering said petition, denies each and every allegation thereof which is not hereinbefore specifically admitted.

S. R. HORTON,
Chinese Inspector and Inspector of Immigration of the United States.

COPY

STATE OF NEW YORK, *Northern District of New York, County of Franklin, ss:*

S. R. HORTON, being duly sworn, says that he has read the foregoing return and knows the contents thereof, and that the same is true to his own knowledge, except as to those matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

S. R. HORTON.

Subscribed and sworn to before me this 23rd day of February, 1910.

Notary Public.

(Endorsed:) Return to writ. Filed Mar. 15, 1910. W. S. Doolittle, clerk.

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Warrant.—Arrest of alien.

UNITED STATES OF AMERICA.

DEPARTMENT OF COMMERCE AND LABOR,
Washington.

Received Oct. 27, 1909. No. 52399/9. Office of commr. of immigration, Montreal, Canada.

To John H. Clark, commissioner of immigration, Montreal, Canada, or to any immigrant inspector in the service of the United States:

Whereas, from evidence submitted to me, it appears that Wong You, Li Dick, Wong Chun, and Hom Chee, aliens, who landed at some unknown port on or about the 23rd day of Oct., 1909, have been found in the United States in violation of the act of Congress approved February 20, 1907, to wit: That the said aliens are unlawfully in the United States, in that they entered without inspection.

I, Ormsby McHarg, Acting Secretary of Commerce and Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to take into custody the said aliens and grant them a hearing to enable them to show cause why they should not be deported in conformity with law.

The expenses of execution and detention are authorized, payable from the appropriation "Expenses of regulating immigration, 1910." Pending disposition of their cases the aliens may be
11 released from custody upon furnishing a satisfactory bond in the sum of five hundred dollars each.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 25th day of October, 1909.

[L. S.] ORMSBY MCHARG,
Acting Secretary of Commerce and Labor.

J. S. B.

POOR

Warrant.—Arrest of alien.

UNITED STATES OF AMERICA.

DEPARTMENT OF COMMERCE AND LABOR,
Washington.

10889 10

No. 52399/10
Received Dec. 2, 1909. Office of U. S. commissioner of immigration, Montreal, Canada.

To John H. Clark, commissioner of immigration, Montreal, Canada, or to any immigrant inspector in the service of the United States:

Whereas, from evidence submitted to me, it appears that Lee Tung, Quong Hang, Wong Yip, Ju Fong, Yip Man, Wong Ah Him, aliens who landed at a port unknown, within a period of three years, have been found in the United States in violation of the act of Congress approved March 3, 1903, and February 20, 1907, to wit.

That the said aliens are unlawfully in the United States in
12 that they entered in violation of sec. 36 of the act of February 20, 1907, and rule 24 of the Immigration Regulations.

I, Charles Earl, Acting Secretary of Commerce and Labor, by virtue of the power and authority vested in me by the laws of the United States do hereby command you to take into custody the said aliens and grant them a hearing to enable them to show cause why they should not be deported in conformity with law. The expense of execution, conveyance to Malone, New York, for detention, including the employment of an attendant or guard, at a nominal compensation of $1.00 and expenses both ways, are hereby authorized, payable from the appropriation "Expenses of regulating immigration, 1910."

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 29th day of November, 1909.

[L. S.] CHARLES EARL,
Acting Secretary of Commerce and Labor.

IFW

13 In the matter of the arrest of Wong Yow, Chinese alien, taken into custody at Utica, N. Y., on October 22, 1909, on the ground that he had surreptitiously entered the United States from foreign territory without examination under the immigration laws, and at a point not designated as a port of entry under the immigration laws.

Examination of alien, October 27, 1909.

Description of alien: Age, 45; height, 5 ft. 4 in. without shoes; large pit opposite lobe right ear; two pin moles lobe left ear.

Examining officers: H. Edsell, inspector; T. W. G. Wallace, interpreter; S. R. Horton, act. as steno.

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In accordance with instructions contained in department warrant of arrest No. dated October 25, 1909, copy of which is hereto attached (marked "Exhibit A") and made a part of this record, Wong Yow was taken into custody at Utica, New York, and brought to the Malone, N. Y., United States immigration detention house by Chinese and Immigrant Inspector George W. Ketcham. Said Wong Yow was brought before Chinese Inspector H. Edsell, at Malone, N. Y., who conducted the hearing as directed in above-mentioned warrant. Upon said Wong Yow's appearance he was
14 informed that the purpose of said hearing was to allow him an opportunity to show cause why he should not be deported to the country whence he came, it having been alleged that he is an alien who entered the United States surreptitiously in violation of the immigration laws. Said Wong Yow was informed of his right to be represented by counsel, which right he waived for the time being. Said Wong Yow was then duly sworn and the following evidence presented:

Questioned by Inspector EDSELL:

Q. Do you wish to be represented by an attorney at this hearing?

A. No, sir; not at this time. I am willing to proceed with this hearing, but I desire to write to friends and consult them as to whether I shall later secure the services of an attorney or not.

Q. On the night of October 22nd, after your arrest by Inspector Ketcham, you were questioned by me as to the time, place, and method of your entering the United States, and as to your life, family, occupation, and various residences. Were the statements you made at that time true?

A. Yes, sir.

Q. If I now asked you the same questions I previously asked you, would your answers be the same?

A. Yes, sir; exactly.

Q. Do you wish me to incorporate in this record as a record of this hearing the questions asked and the answers given in the former examination?

A. Yes, sir; I would answer the questions the same.

The following is a transcript of the examination of the alien Wong Yow as made by Chinese Inspector H. Edsell on October 22, 1909, through official Chinese Interpreter T. W. G. Wallace, steno-
15 graphically reported and subsequently transcribed by official stenographer Howard J. Kelley.

Witness, being duly sworn, testified as follows:

Q. What is your name?

A. (In English) Wong Yow. I pronounce it "You," but spell it "Yow."

Q. Where were you born?

A. (English) Born in China (in Chinese) Wong Lep, Hop Ping District, China.

POOR

Q. What other name have you beside Wong You?
A. My marriage name is Wong Tuck Foon. I have none other.
Q. Write your names in the record, please.
(Witness signature.)

Q. You are speaking English; do you desire that this examination be conducted in English, or do you wish to talk through the interpreter?
A. (Interpreted in Chinese.) I prefer to employ the services of the interpreter.
Q. You stated you were born in Wong Lep village, China?
A. Yes, sir.
Q. How long did you live in China after your birth?
A. I remained there until I was 17 years of age, and then came to the U. S.
Q. Through what port did you come to the U. S.?
A. San Francisco.
Q. What was your father's name?
A. Wong Fai Chang.
Q. Where was your father born?
A. Wong Lep village, Hop Ping District, China.
Q. What was your mother's name?
A. Soo Hoo She.
Q. Were your mother and father both Chinese?
A. Yes, sir.
Q. Are you Chinese?
16 A. Yes, sir.
Q. Was your father ever in the U. S.?
A. No, sir.
Q. Was your mother ever in the U. S.?
A. No, sir.
Q. Can you give the exact date of your entry to the U. S. when you were 17 years of age, through the port of San Francisco?
A. I don't remember the date of my arrival. I knew I came on board the steamer "City of Peking."
Q. Can you give the month and year of your arrival?
A. I think it was the 7th month; I am not positive. I don't know the year and the day.
Q. Under what name did you enter?
A. Wong Yow.
Q. How old are you now?
A. Forty-five years of age.
Q. How long did you remain in San Francisco after your admission to the U. S.?
A. I was there for about between 8 and 9 years.
Q. What was your occupation during that time?
A. I was a grinder for bean-curd.
Q. Were you a laborer?
A. Yes, sir.

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Q. From San Francisco where did you go?

A. I went to Boston, Mass.

Q. In what year did you go to Boston?

A. Either 1893–1894. I have forgotten the Chinese year. 1893, I think.

Q. You have stated that you came to the United States when you were 17 years old; that you are now 45, which would have made you come to the United States in about the 7th year of K. S. (1881); you then stated you remained in San Francisco about 9 years, and that you went to Boston in 1893–1894. Where did you spend the remainder of the time between your arrival in the United States and the time you arrived in Boston?

17 A. I may have made a mistake as to the length of time I was in San Francisco. My best recollection is that I went to Boston in either 1893 or 1894.

Q. What was your occupation in Boston?

A. I was a laundryman there.

Q. How long did you live in Boston?

A. I have remained in Boston as a laundryman until the present time, excepting two trips I made to China in between.

Q. Did you register under the Chinese exclusion act?

A. Yes, sir.

Q. Have you your certificate with you.

(Inspector's note:) Witness makes a search for his certificate through all his pockets and is unable to find the certificate. States that he exhibited same to Inspector Ketcham on the train coming from Utica to Malone this day, but can not find same now.

Inspector Ketcham, who is present, states that he saw that the witness had a certificate of residence, but is not able to state that he was the proper holder thereof.

Incidental to the searching of his pockets, the witness exhibits several envelopes addressed to Wong Yow, 12 Ward Street, Brockton, Mass., and Wong Yuen, 19 Green St., Brockton, Mass.: also exhibits a printed laundry list for Charlie Fuin Chinese Laundry, 11 Green St., Brockton, Mass. Same bore imprint of the Farrington Print Company, 33 Beach Street, Boston. Also exhibited a handbill addressed to "My customers and friends" stating that the building in which his laundry was located was being torn down and that he was compelled to move to 12 Ward Street on Monday, Apr. 25th. Signed, Charlie Finn.

Q. Where have you worked in Boston?

18 A. 1550 Dorchester Ave., Boston. I was at Green St., in Brockton, and then afterwards moved to 12 Ward St., Brockton, Mass. Then I went to 19 Green St., Brockton, Mass., and the rest of the time I have been working 2 or 3 weeks here and there.

Q. When were this laundry list and this handbill, which you have exhibited, printed?

POOR

A. (In English.) 1900. I don't know. I have forgotten all about it.

Q. When did you leave Brockton?

A. I still retain an interest in that Green St. laundry, Brockton, Mass.—a small interest; it is not sufficient for my partner and myself, so I have been working elsewhere.

Q. Well, answer my question. When did you leave Brockton?

A. The 5th month, this year.

Q. Where did you go when you left Brockton?

A. I went to Boston and was there for about 3 months or so. I was idle, and then after that I took the train to Albany; then I went to some small towns; I don't know the names of them. It is all strange country to me.

Q. How long were you in Montreal?

A. I have never been to Montreal.

Inspector KETCHAM, who was present, is examined.

Q. Did this witness tell you that he was just coming from Montreal?

A. He said he went up to Montreal to visit his cousin.

By witness, WONG YOW:

Q. What did you say, Mr.?

By Mr. KETCHAM:

A. I say you went to Montreal to visit your cousin.

19 By Mr. EDSELL to witness, Wong Yow:

Q. Why did you state to Inspector Ketcham that you went to Montreal to visit your cousin, and now say that you have not been in Montreal?

A. I told him I wished to go to Montreal, but could not.

Q. Why couldn't you go?

A. I got to a station and wanted to proceed to Montreal, but it was raining hard, and from there I turned back again, and then was arrested.

Q. Where were you going on the train from which you were taken last night?

A. I was on my way to Albany and from there to Boston.

Q. Where did you meet the men who were found with you on the train?

A. They just happened to be there—met them on the train.

Q. Are you aware of the fact that Inspector Ketcham and myself were on that train last night?

A. No, sir; I was not aware of that fact.

Q. Well, we were both of us on that train last night. We know when, where, and how you boarded the train; we knew the men who were going to get you before they got there—before you got on the train. Now, there is no use of your telling such a story as this. We rode down the track with those men who got you on below this city.

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Now, I want you to tell me the truth and hurry this thing along. There is no use of your staying in jail, or some such place, for weeks or months, just because you are obstinate in answering questions. How long were you in Montreal?

A. I came from Montreal.

Q. When did you leave Montreal?

A. I left Montreal on Monday.

Q. How did you leave Montreal?

20 A. We came by automobile and two white people brought us. We were in this house where we started last night for about three days.

Q. Where were you stopping in Montreal?

A. I was in the store of Sue Sing, 123 Lagaughetiere St.

Q. What were the names of the white men who brought you in an automobile?

A. I don't know their names.

Q. How many men did these white men take in the automobile?

A. There were four of us in the party—the 3 that were captured with me and myself.

Q. You mean four Chinese and the two white men?

A. Yes, sir; two white people, too.

Q. Where did you enter the automobile?

A. Right at the corner of Lagaugchetiere Street, where the large church or cathedral is—got on there, in Montreal.

Q. How long were you in the automobile?

A. We started just at dusk between 5 and 6 o'clock as it turned dark, and I imagine we arrived at our destination between 2 and 3 in the morning.

Q. Were you moving all the time in the machine?

A. Came directly.

Q. Where were you going?

A. The entire arrangement was carried through Sue Sing's in Montreal, and I was charged $150 and the others that were with me were charged $170 to be taken into the United States and to be put into some town.

Q. Wasn't the name of the town given?

A. They didn't tell me the name of any town.

Q. Do you know where you crossed the border into the United States?

A. I do not know.

Q. Well, were you examined by any immigration officer or Chinese inspector of the United States at the border or elsewhere?

21 A. No, sir.

Q. Did you see any United States officer before reaching the point where you left the automobile?

A. No, sir.

Q. Did the white men accompany you the entire distance from Montreal to the point where you left the automobile?

POOR

A. They accompanied us the entire distance.

Q. Do you know the name of the place at which you left the automobile?

A. No, sir.

Q. Was it the same place at which you boarded the train last night?

A. No, sir; last night we drove for about three hours to get to the train.

Q. Who drove you?

A. One white man that came out from Montreal with us last night, but the chauffeur of the automobile was not there. It was a different man.

Q. Where had you been staying since Monday night or Tuesday morning, when you left the automobile?

A. I don't know the name of the town. It was the white man who brought us out from Montreal—it was his house. I presume it was the same house because he took us there, and left us there, and told them to take care of us, and they went away. He came last night and brought us to the train.

Q. Did he use his own vehicle last night to drive you in?

A. I imagine that he was not the driver of the rig last night, but I saw him before we started and after that he was muffled up. At least I imagined it was the same man who was sitting there alongside the driver, but he was muffled up, and I cannot say positively whether it was the same man who started from Montreal or not.

22 Q. Was it a team of horses that he drove last night, or an automobile?

A. Two horses on the rig.

Q. What kind of a looking man was this one who drove you last night, and who accompanied you from Montreal in the automobile?

A. I should imagine he was a man about 30 years of age; that is the best description I can give of him. It was in the dark that I saw him.

Q. Had you paid all the money that you were to pay to these men for your bringing to the United States?

A. I didn't pay any money. I was not to pay any money anyway. The money was guaranteed to Sue Sing in Montreal and they were to attend to the chauffeur and the driver, and the men who accompanied us.

Q. Who guaranteed them the payment of the money?

A. Nobody guaranteed the money. I told Sue Sing that I would pay them after I got through, and he guaranteed it to the white man, who was responsible for bringing us into the United States.

Q. What was the name of the particular man in Sue Sing Company who made the arrangements?

A. Wong Laing.

Q. How long were you in Montreal prior to your starting on this trip?

A. About two months or so.

Q. How long had you been in China prior to that?

A. Almost two years.

Q. Through what port did you depart from the United States about two years ago when you went to China?

A. Through the port of Richford. I had no papers with me, and didn't report to the authorities there. It was not my intention to return to the United States.

23 Q. On what steamer did you go from Hongkong to Vancouver at the time of your return to Canada a little over two months ago?

A. "Empress of India."

Q. What name did you give to the ship's officers?

A. Wong Yow.

Q. How did you gain entry to Canada on arrival at Vancouver?

A. I didn't pay anything.

Q. How could you gain entry to Canada under the Canadian laws, which provide for the payment of a $500 head tax by a Chinese laborer, without paying any money?

A. I refuse to say.

Q. Where did you first meet the three men who were found with you on the train last night, and who you say came from Montreal with you in the automobile.

A. I only knew one of the party before getting on the automobile; the other two were in the automobile when I arrived.

Q. What was the name of the one you knew?

A. Wong Chun.

Q. How long have you known him?

A. He comes from the same village as myself, and I have known him since we were boys together.

Q. Has he ever been in the United States?

A. I don't know, sir.

Q. Did Wong Chun come to Montreal at the same time you did from China?

A. He came before I did; he has been in Montreal between one and——

Q. Did he formerly live in Brockton, Mass.?

A. I don't know. I never knew that he resides in the United States.

Q. Have you any property in the United States at this time?

24 A. I have an interest in a laundry, but it is valueless.

Q. What laundry?

A. When I last knew of it it was in Green Street, Brockton, Mass.; whether it is in existence to-day or not, I cannot say.

Q. How much of an interest did you own in it?

A. I started the laundry there, and after awhile I turned it over to a partner, who didn't have to pay me anything to obtain an interest.

Q. Was it running when you last knew of it?

A. It was operating at the time I left for China. I don't know its present condition.

Q. Was it profitable when you left for China?

A. No, sir.

Q. Where was it located when you last knew of it?

A. 11 Green St., Brockton, Mass.

Q. Have you any other property in the U. S.?

A. No, sir.

Q. Have you any debts due you and uncollected in the U. S.?

A. No, sir.

Q. Have you a family in the U. S.?

A. No, sir.

Q. Have you a family anywhere?

A. I have a wife and son in China.

Q. Are they living in Wong Lep village?

A. Yes, sir.

A. Is that their home?

A. Yes, sir.

Q. Is that your home?

A. Yes, sir.

Q. On your departure from the U. S. you have said that you did not intend to return to the U. S., have you not?

A. It was not my intention to return to the U. S. at the time I went to China.

25 Q. When you left China on the "Empress" Line steamer, some 2 months ago, for Vancouver, B. C., what was your intended destination?

A. I intended to go to Montreal; it was my intention to return to the U. S., stopping at Montreal first. I had no particular point in the U. S.—either New York, Boston, or some other large city.

Q. Why did you want to return to the U. S.?

A. I speak English, more or less. I have lived here for a long while, and the wages are good.

Q. What are the names of the other two men who accompanied you besides Wong Chun?

A. Lai Dick and Hom Che. (In English) I never knew them before; I met them on the automobile, that's all. I never knew them.

Q. Did you pay the $500 Canadian head tax on your arrival at Vancouver?

A. No, sir.

Q. Did you enter Canada as a merchant?

A. I was not questioned there.

Q. Were you placed in the detention house at Vancouver?

A. I was there for two days.

Q. Was there some special arrangement made for your admission to Canada whereby you were able to come to Montreal?

A. I paid $500 head tax. The first time I didn't tell the truth.

Q. You have said that you made two trips to China while you were residing in the United States. When did you make the first trip, and through what port did you depart?
A. Through the port of Rachford. I do not remember the date.
Q. Did you go as a laborer?
A. Laborer's certificate.
Q. Through what port did you return?
A. Through the same port, Richford.
Q. When did you make your second trip to China?
26 A. It was about two years or so ago. My present trip—about three years, perhaps.
Q. Were you ever in this detention house before?
A. No, sir.
Q. Were you ever in Malone before?
A. No, sir.
Q. How did you know Inspector Ketcham?
A. May have seen him in some town—Albany or some place.
Q. In boarding the train last night, who bought your tickets for you?
A. This white man gave us mileage for the four of us.
Q. Did the white man get on the train with you?
A. No. He put us on the train and left.
Q. Did he go clear to the train with you?
A. Yes, sir. He even helped me up on the train.
Q. Was the name of the town on which you got on the train last night Owl's Head?
A. I don't know. It was dark.
Q. Have you understood the interpreter in everything he has asked you?
A. Yes, sir.
Q. Does he speak your dialect?
A. Yes, sir.
Q. Is there anything further that you wish to say?
A. No.

(Witness signatures.)

Chinese & Immigrant Inspector.

From the foregoing evidence I, the duly authorized Chinese & acting immigrant inspector in said case, do find the following facts:
That said Wong Yow is an alien, namely, a subject of China; that he entered the United States surreptitiously, without examination under the immigration laws, at a place not designated as a port of entry under the immigration laws, and that he is in the United States in violation of law.
27

Chinese & Acting Immigrant Inspector.

In the matter of the arrest of Wong Chun, Chinese alien, taken into custody at Utica, N. Y., on October 22, 1909, on the ground that he had surreptitiously entered the United States from foreign territory without examination under the immigration laws, and at a point not designated as a port of entry under the immigration laws.

Examination of alien, October 27, 1909.

Description of alien: Age, 31. Height, 5 ft. 2½ in., without shoes. Large scars in hair 2½ inches above left eyebrow, pit ½ in. front lobe right ear.

Examining officers: H. Edsell, inspector; T. W. G. Wallace, interpreter; S. R. Horton, act. as steno.

In accordance with instructions contained in department warrant of arrest No. , dated October 25, 1909, copy of which is hereto attached (marked "Exhibit A") and made a part of this
28 record, Wong Chun was taken into custody at Utica, New York, and brought to the Malone, N. Y., United States immigration detention house by Chinese & Immigrant Inspector George W. Ketcham. Said Wong Chin was brought before Chinese Inspector H. Edsell at Malone, N. Y., who conducted the hearing as directed in above-mentioned warrant. Upon said Wong Chun's appearance he was informed that the purpose of said hearing was to allow him an opportunity to show cause why he should not be deported to the country whence he came, it having been alleged that he is an alien who entered the United States surreptitiously in violation of the immigration laws. Said Wong Chun was informed of his right to be represented by counsel, which right he waived for the time being. Said Wong Chun was then duly sworn and the following evidence presented:

Questioned by Inspector EDSELL:

Q. Do you wish to be represented by an attorney at this hearing?

A. No, sir; not at this time.

Q. On the night of October 22nd, after your arrest by Inspector Ketcham, you were questioned by me as to the time, place, and method of your entering the United States, and as to your life, family, occupation, and various residences. Were the statements you made at that time true?

A. I spoke the truth at that time.

Q. If I asked you the same questions now I previously asked you, would your answers be the same?

A. They would be the same.

Q. Do you wish me to incorporate in this record as a record of this hearing the questions asked and answers given in the former examination?

A. Yes; you can incorporate the statements; they have my signature and they are correct.

29 The following is a transcript of the examination of the alien Wong Chun, as made by Chinese Inspector H. Edsell on October 22, 1909, through official Chinese Interpreter T. W. G. Wallace, stenographically reported and subsequently transcribed by official Stenographer Howard J. Kelley:

Witness, being duly sworn, testifies as follows:

By Mr. EDSELL:

Q. What you may say here before these officers may be used against you, or for you, in any proceeding which may be followed after this, and you may talk or you may not, just as you please. I will now give you opportunity to show that you are legally in, or belong in, the U. S.

Q. What is your name?

A. Wong Chun.

Q. Have you any other name?

A. Wong Kam is my marriage name. I have none other.

Q. Write your names in the steno's minutes.

(Witness's signatures.)

Q. What is your wife's name?

A. Quan She.

Q. Where does she live?

A. Long Poy, Hop Ping District, China.

Q. Have you any children?

A. No, sir.

Q. How long have you been married?

A. About 10 years.

Q. How long did you live in Long Poy prior to your marriage?

A. I live in Kam Hing Lee, Hop Ping District. The other name is my wife's home village before she was married. I was in my home village for about 20 years, then I was married.

Q. How old are you now?

A. 31 years of age.

Q. Where were you born?

30 A. Kam Hing Lee, Hoy Ping District, China. Wong Lep is the name of the immediate district, including several villages.

Q. What was your father's name?

A. Wong Fook.

Q. Was he a Chinese?

A. Yes, sir.

Q. What was your mother's name?

A. Laing She.

Q. Was she a Chinese?

A. Yes, sir.

Q. Was either your father or mother ever in the U. S.?

A. No, sir.

Q. Have you ever been in the U. S. before?

A. I came here 5 years ago.

Q. Through what port?

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A. I made merchant's papers and passed through the town of Plattsburg.

Q. In what firm were you a member?

A. I don't remember the name of the firm. I think it is Lee Lung.

Q. Where was it located?

A. It was 42. I have forgotten the name of the street.

(Inspector's note:) Applicant stutters and stammers and seems unable to tell the street or number.

Q. Were you ever in the U. S. before?

A. I have been for five years.

Q. Where have you been during that 5 years?

A. I made my headquarters in two stores in Boston—Kwong Wo Lung and Yee Lung—and worked here and there as a laundryman. I have forgotten the names and addresses of the laundries I worked at.

Q. In what cities were the laundries?

A. In Boston. I don't know their addresses.

Q. I want to tell you that your cousin Wong You has told
31 everything concerning you and himself and the whole arrangement by which you entered the U. S. last Monday. It is therefore useless for you to prolong this proceeding. When did you leave Montreal?

A. I came to the U. S. for the first time last Monday, leaving Montreal.

Q. What time did you leave Montreal?

A. It was towards dusk. I don't know the hour.

Q. What means of transportation did you use?

A. Automobile.

Q. Where did you get in the automobile?

A. Near the church on Lagauchetiere St.

Q. Who accompanied you in the automobile?

A. 2 white people and three other Chinese and myself, making 4.

Q. The same three other Chinese who were found in the train with you at Utica last night?

A. Yes, sir; the two white people.

Q. What were the names of the white people?

A. I don't know, sir.

Q. What arrangements had you with the white people for taking you in the automobile?

A. The firm told me if I managed to get thru into the U. S. I would have to pay them $170. I make no arrangement with the white people.

Q. What firm had told you this?

A. Sue Sing.

Q. What is that firm's address?

A. Lagauchetiere St., Montreal. I don't remember the number.

Q. Did you pay the money?

A. No.

Q. Where were they to take you?

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A. I intended to go to Boston.

Q. How far were these white men to take you in the automobile?

A. They took us some distance. I don't know how far.

32 Q. No. How far were these white men to take you in the automobile?

A. The firm told me I was to go to Boston for the $170.

Q. How long did you ride in the automobile?

A. 5 or 6 hours, I should say. I don't know.

Q. Was it still dark when you left the automobile?

A. Yes, sir.

Q. Where did you stop and leave the automobile?

A. It was a farmhouse they took me to.

Q. How long did you stay at that farmhouse?

A. I remained there until we started for a small town last night by horse and rig.

Q. Who drove the rig?

A. A white man. I don't know him. I would know the other white man who was in the automobile—he is the one who came from Montreal with us—if I saw him face to face.

Q. Was the man who drove you from this farmhouse last night the same man who was in the automobile with you from Montreal to the farmhouse?

A. Yes, sir.

Q. How long did you drive from this farmhouse last night in the rig?

A. Between 2 and 3 hours, I should say.

Q. Then what happened?

A. He took us to the train and helped us on.

Q. Who bought your tickets?

A. The white man gave us a book.

Q. To whom did he give the book?

A. I was in the rear and I didn't see who he gave it to.

Q. Who gave the book to the conductor on the train?

33 A. I was sitting down there alone and the conductor came along and stuck something in my cap. I don't know who gave it to him.

Q. Describe the house where you stopped Monday night, or Tuesday morning, until last night.

A. No, sir; I could not. It was a low building—a barn we had to sleep in.

Q. Have you understood the interpreter in all he said?

A. Yes.

Q. Does he speak the same dialect you speak?

A. Yes, sir.

Q. Have you anything further to say?

A. Nothing else.

(Witness's signature to notes.)

Chinese and Immigrant Inspector.

POOR

From the foregoing evidence I, the duly authorized Chinese and acting immigrant inspector in said case, do find the following facts: That said Wong Chun is an alien, namely, a subject of China; that he entered the United States surreptitiously, without examination under the immigration laws, at a place not designated as a port of entry under the immigration laws, and that he is in the United States in violation of laws.

Chinese and Acting Immigrant Inspector.

34 In the matter of the arrest of Hom Chee, Chinese alien, taken into custody at Utica, N. Y., on October 22, 1909, on the ground that he had surreptitiously entered the United States from foreign territory without examination under the immigration laws, and at a point not designated as a port of entry under the immigration laws.

Exam. of alien, October 27, 1909.

Description of alien: Age, 40; height, 5 ft. 4½ inches, without shoes; scar 2½ in. in vertical diameter front of right ear; large scar 1" in diameter center top of head, blue mole left side upper lip, another right side of chin.

Examining officers: H. Edsell, inspector; T. W. G. Wallace, interpreter; S. R. Horton, act. as steno.

In accordance with instructions contained in department warrant of arrest No. , dated October 25, 1909, copy of which is hereto attached (marked "Exhibit A") and made part of this record, Hom Chee was taken into custody at Utica, New York, and brought to Malone, N. Y., United States immigration detention house by Chi-

35 nese and Immigrant Inspector George W. Ketcham. Said Hom Chee was brought before Chinese Inspector H. Edsell, at Malone, N. Y., who conducted the hearing as directed in above-mentioned warrant. Upon said Hom Chee's appearance he was informed that the purpose of said hearing was to allow him an opportunity to show cause why he should not be deported to the country whence he came, it having been alleged that he is an alien who entered the United States surreptitiously in violation of the immigration laws. Said Hom Chee was informed of his right to be represented by counsel, which right he waived for the time being. Said Hom Chee was then duly sworn and the following evidence presented:

Questioned by Inspector EDSELL:

Q. Do you wish to be represented by counsel at this hearing?

A. I haven't any money to secure an attorney.

Q. Are you prepared to go on with this hearing at this time without an attorney?

A. Yes, sir.

Q. On the night of October 22nd, after your arrest by Inspector Ketcham, you were questioned by me as to the time, place, and method

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of your entering the United States, and as to your life, family, occupation, and various residences. Were the statements made by you at that time true?

A. I spoke truthfully at that time.

Q. If I now asked you the same questions I previously asked you, would your answers be the same?

A. I would answer exactly the same way.

Q. Do you wish me to incorporate in this record as a record of this hearing the questions asked and answers given in the former examination?

A. You may incorporate the statement; it has my signature and it is true.

Q. In that preveious statement you told that you were a
36 citizen of Canada and that you had a certificate of naturalization issued by a Canadian court and a head-tax certificate showing that you had paid a head tax in Canada. Have you secured those certificates?

A. Yes, sir. I received them this morning.

(Witness places in evidence Canadian naturalization certificate No. 3856 issued by the circuit court of the district of Montreal to Hum Chee, formerly of Sinning, Province of Canton, China, by Deputy Clerk of the Court Allen Cabot, on Nov. 27, 1908; also places in evidence Canadian head-tax certificate No. 23636, issued to Ham Chee at Vancouver, B. C., on July 19, 1899, by J. M. Howell, collector of customs, showing landing at Vancouver from S. S. "Empress of India." Same are marked "Exhibit B and C.")

The following is a transcript of the examination of the alien Hom Chee as made by Chinese Inspector H. Edsell on October 22, 1909, through official Chinese Interpreter T. W. G. Wallace, stenographically reported and subsequently transcribed by Official Stenographer Howard J. Kelley:

Witness being duly sworn testifies as follows:

By Inspector EDSELL:

It is not required that you talk, if it pleases you to keep silent, and you are advised that anything you say may be used either for or against you in any procedure which may be taken hereafter.

Q. What is your name?

A. Hom Chee. Hom You Moon is my marriage name. I have none other.

(Witness's signatures.)

Q. What is your wife's name?

A. Lee She.

Q. Where were you born?

37 A. Born in San Francisco. I don't know the address.

Q. How old are you?

A. 40.

Q. How long did you live in San Francisco after your birth?

A. I was there until I was 3 years of age; then I went to China.
Q. Where does your wife live?
A. Mo Lim, Sun Ning District, China.
Q. Is that your home village?
A. Yes, sir.
Q. How long have you been married?
A. Married when I was 26 years of age.
Q. How long did you live in the village of Mo Lim prior to your marriage?
A. 20 odd years. I don't remember exactly.
Q. Is your father living?
A. My father is dead. My mother is living.
Q. Where does your mother live?
A. She is living in my home village at the present time.
Q. After going to China when you were 3 years of age, when did you return to the U. S., if ever?
A. This is my first visit to the U. S. since that time. I have been in Canada for 10 years or so.
Q. Have you been back to China during those 10 years that you have been residing in Canada?
A. No, sir.
Q. Where have you been living in Canada?
A. I lived at 60 Victoria St., Montreal.
Q. What was your occupation?
A. Laundryman there.
Q. Do you own the laundry?
A. No, sir; I was only working there.
Q. When did you leave Montreal?
A. I think it was Monday evening, at the same time as the other three were arrested with me, came.
38 Q. At what time in the evening did you leave?
A. Towards dusk.
Q. By what kind of a vehicle did you leave?
A. I came by automobile.
Q. How long did you ride in the automobile?
A. Several hours; I am not sure.
Q. Who accompanied you besides the Chinese, if anyone?
A. Two white people.
Q. Did you cross into the U. S.?
A. Yes, sir.
Q. Where?
A. I don't know, sir.
Q. Were you examined by any officers at the American border?
A. No.
Q. Was it your purpose to smuggle into the U. S.?
A. I was a citizen of the U. S. without a paper.
Q. Is there any person living that you know who knows of your birth in the U. S.?

A. No, sir. If I had a witness I would have procured papers long ago and come into the U. S.

Q. You know of no person either in the U. S. or in Canada who knows any of the circumstances concerning your birth?

A. No, sir; I have no witnesses.

Q. Who induced you to attempt to smuggle into the U. S.?

A. The white man that accompanied us.

Q. Did he come to the laundry where you were working and talk with you?

A. Yes, sir.

Q. How much were you to pay for his services?

A. $170.

Q. Have you a Canadian head-tax certificate?

A. I have a paper there from the British Government. I
39 have been in Montreal. I am a British subject and the paper refers to that. I have no head-tax certificate.

Q. When did you get this British citizenship certificate?

A. About 2 years ago.

Q. Where did you get it?

A. In the Government building in the court controlled by the harbor commissioners in Montreal.

Q. Under what name are you registered as a citizen of Canada?

A. Hom Chee.

Q. Did you go into court and take the oath of allegiance to the British Government?

A. Yes, sir.

Q. Where is the certificate which the court issued to you?

A. At 60 Victoria St., Montreal, at the present time.

Q. Is it in a trunk or is it available to the persons in charge of the premises?

A. It is in the custody of Yee Ah Heung at that address. I will give you a letter to him, so you can see the papers, if you wish.

Q. What do you wish us to do with you now?

A. I want to go back to Montreal.

Q. What do you think the Canadian Government will have to say about that?

A. They will have to permit me to return there; not only am I a British subject, but I have a paper showing that I paid $100 to the Government when I first arrived there.

Q. Where is that paper?

A. Also in the custody of the same person.

Q. How will you be able to identify yourself as to the one to whom those papers were issued?

A. There is a signature there, and that would be verification for it. Just a copy of the signature over again.

40 Q. What do you expect to do in the event the Canadian Government will not permit you to return?

A. That is not a possibility, because I know I will be admitted if I started to go to Canada.

Q. The Canadian Government usually requires proof from any Chinese who have departed that they registered at the time of their departure?

A. My paper, being a British subject, permits me to go anywhere I want to and return when I want to.

Q. Have you understood the interpreter in all he said?

A. Yes, sir.

Q. Is there anything further you desire to say?

A. Nothing else.

(Witness's signature to notes.)

Chinese & Immigrant Inspector.

From the foregoing evidence I, the duly authorized Chinese & acting immigrant inspector in said case, do find the following facts: That said Hom Chee is an alien, namely, a subject of China; that he entered the United States surreptitiously, without examination under the immigration laws, and that he is in the United States in violation of law.

Chinese & Acting Immigrant Inspector.

Application for warrant of arrest under sections 20 and 21 of the act of February 20, 1907.

DEPARTMENT OF COMMERCE AND LABOR,
IMMIGRATION SERVICE,

(Place) *Montreal, Canada, November 29, 1909.*

41 Confirming Inspector Edsell's telegram of even date from Rouses Point, the undersigned respectfully recommends that the Secretary of Commerce and Labor issue his warrant for the arrest of Lee Tung, Quong Hang, Wong Yip, Ju Fong, Yip Man, and Wong Ah Him, the aliens named in the attached certificate upon the following facts which the undersigned has carefully investigated, and which, to the best of his knowledge and belief, are true:

(1) Here state fully facts which show alien to be unlawfully in the United States. Give sources of information, and, where possible, secure from informants and forward with this application duly verified affidavits setting forth the facts within the knowledge of the informants.

Said aliens were taken from the canal boat "William I. Higgins" by Immigrant Inspector James Yale at Rouses Point, N. Y., immediately after said boat's arrival from Canada. Otto A. Petersen, master of said boat, stated under oath that the aliens were taken on board his vessel at Chambly, Quebec, under an agreement whereby said aliens were to be delivered at a point within the United States for $300, and that they had been brought surreptitiously across the bound'ry without inspection and at a point not designated by law as a United States port of entry for aliens. (Master Petersen's statement is attached hereto.)

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(2) The present location and occupation of above named aliens are as follows: Under surveillance in the United States Immigration and Chinese detension house at Malone, N. Y.

Pursuant to rule 35 of the Immigration Regulations there is attached hereto and made a part hereof the certificate prescribed in paragraph (c) of said rule, as to the landing or entry of said
42 alien, duly signed by the immigration officer in charge at the port through which said alien entered the United States.

Commissioner.

Examination of alien, November 29, 1909.

In the matter of the arrest of Wong Yip, Chinese alien, taken into custody near Rouses Point, N. Y., on November 28, 1909, on the ground that he had surreptitiously entered the United States from foreign territory without examination under the immigration laws and at a point not designated as a port of entry under the immigration laws.

Description of alien: Age, 37; height, 5′ 3½″ without shoes; scar on left temple; prominent front teeth; two very small pits on right cheek one inch apart; two scars near right corner of mouth. Speaks no English.

Examining officers: H. Edsell, inspector; T. W. G. Wallace, interpreter; Louis Ober, stenographer.

In accordance with instructions contained in department warrant of arrest No. 52399/10, dated November 29, 1909, copy of which is hereto attached (marked "Exhibit A") and made part of this record, Wong Yip was taken into custody at or near Rouses Point, N. Y., by Immigrant Inspector James Yale and brought to the Malone, N. Y., United States immigration detention house, where a hearing was conducted by Chinese and Acting Immigrant Inspector Edsell. Upon said Wong Yip's appearance he was informed that the purpose of said hearing was to allow him an opportunity to show cause why he should not be deported to the country whence he came, it having been alleged that he is an alien who entered the
43 United States surreptitiously in violation of the immigration laws. Said Wong Yip was informed of his right to be represented by counsel, whch right he decided to avail himself of. The alien was then duly sworn and following questions asked:

Questioned by Inspector EDSELL:

Q. Do you desire counsel to represent you in this proceeding?

A. I wish to engage the services of an attorney.

Q. Are you willing to make a statement concerning yourself and secure an attorney to-morrow?

A. I don't wish to be questioned at the present time. I want to consult my cousin and my attorney first. I can not give any statement until then.

Q. What is your full name?

A. Wong Yip is my marriage name and Kom Loy is my childhood name. I have no other.

Q. Where were you born?

A. I was born in San Francisco. I went to China when a small boy.

Q. Where were you born in San Francisco?

A. I was too young to remember.

Q. What was your father's name?

A. Wong Guey Chek.

Q. What was his occupation?

A. He had a grocery store.

Q. What was the name of the firm?

A. I do not remember.

Q. How long did you live in San Francisco after your birth?

A. Four years.

Q. Who took you to China?

A. My father and mother.

Q. Did you have any brothers or sisters?

A. No, sir.

Q. In what village in China have you been living since your return there?

A. Woo Paing, Hoy Peng District, China.

44 Q. Are you married?

A. Yes, sir.

Q. When were you married.

A. When I was 17 years of age.

Q. How long did you live in Woo Paing before your marriage?

A. About eleven years.

Q. What has been your occupation in Woo Paign?

A. I have none.

Q. How have you made a living?

A. We have money.

Q. What is your father's occupation?

A. My father died when I was four years of age, shortly after he took me to China.

Q. What is your mother's name?

A. Ang She.

Q. Is she still living?

A. She died when I was six years of age.

Q. Did your mother ever live in the United States?

A. Yes, sir.

Q. Did your father have any brothers?

A. No, sir.

Q. Did your mother have any brothers?

A. She had one brother. He is now dead.

Q. Did your father have any sisters?

A. No, sir.

Q. Did your mother have any sisters?

A. No, sir.

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Q. Are you sure that your father never had either brother or sister?

A. I am sure of it, sir.

Q. Are you sure that your mother never had either brother or sister excepting the one brother who is now dead?

A. Yes, sir; I am sure of that.

Q. Are you sure you never had any brothers or sisters?

45 A. Sure of it. Never had any.

Q. Have you ever been in the United States before now?

A. Yes, sir.

Q. When?

A. I saw you [addressing the interpreter] in my laundry in Quincy, Mass. (Note: Interpreter Wallace states that he was in Quincy, Mass., investigating a Chinese case with Inspectors Schell and McCabe, of Boston, on February 20, 1907.)

Q. How long were you a laundryman in Quincy, Mass.?

A. Five or six years.

Q. What was the name of the laundry?

A. Charley Lee.

Q. Where was it located?

A. 67 Water Street.

Q. Did the laundry belong to you?

A. Yes, sir.

Q. At what port did you enter the United States at the time you began your previous residence here?

A. New Bedford.

Q. What I mean is, when you came to the United States from China where did you come into the country?

A. I came through the port of Richford.

Q. What kind of paper did you have at the time of your entry?

A. Birth certificate.

Q. Under what name did you enter at Richford?

A. Wong Kim Loy.

Q. Where did you get the paper that you presented at Richford?

A. I wish to change my statement. When I first came I had merchant's papers.

Q. As a member of what firm?

A. Wong Chong Kee, of Fall River, Mass. I have forgotten the address.

46 Q. Where did you get these papers?

A. It was sent to me by that firm when I was in China before I started.

Q. What has become of that firm now?

A. It has been closed for ten years past.

Q. Did you really have an interest in the firm?

A. I had $100 interest.

Q. Where did you get that interest?

A. It was given to me by Chew Yut Sun.

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Q. Did he give you the interest merely so that you might enter the United States?

A. Yes, sir.

Q. What was the date of your entry at Richford?

A. I think it was on the 1st day of the 1st month of the 23d year of K. S. (February 2, 1897.)

Q. Are you sure that your name in the papers you carried was given as Wong Kim Loy?

Q. Had you ever been in the United States before that entry at Richford?

A. No, sir.

Q. Then you were only joking when you said that you were born in the city of San Francisco?

A. No, sir.

Q. Well, if you were never in the United States until you entered at Richford in K. S. 23, you could not have been born in the United States.

A. I thought you were asking me about coming to the United States previous to that time.

Q. Is there any person now in the United States who knows of your birth in this country?

A. No, sir.

Q. Are you sure of that?

A. Yes, sir.

Q. After entering the United States in K. S. 23 at Richford, what was your occupation?

A. Laundryman—I mean I worked for two years in a store in Fall River and then became a laundryman.

Q. Where did you first become a laundryman?

47 A. In Boston.

Q. What became of the laundry that you owned in Quincy?

A. A cousin of mine by the name of Wong Jin is looking after it for me now. It is worth about $300.

Q. Is it still running?

A. It is running as far as I know.

Q. When did you leave the United States?

A. About three years ago.

Q. Through what port?

A. I do not remember through what port. I took the steamer at Vancouver.

Q. Did you intend to return to the United States at the time of your departure?

A. I did intend to return.

Q. Did you secure a return certificate at the port through which you departed?

A. No, sir.

Q. Have you ever registered in the United States?

A. No, sir. I came too late for it.

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Q. How did you expect to return to the United States, having been a laborer prior to your departure and not being registered, and therefore not having secured a return certificate?

A. I was going to take a chance of getting over.

Q. Well, did you take the chance?

A. Yes.

Q. When did you leave China on the return trip?

A. I left China November, 1908, went to Vancouver, and from there to Montreal, and have lived there since.

Q. On what steamer did you come to Vancouver?

A. "Empress of China."

Q. Did you pay the head tax in Canada?

A. I paid $500 head tax.

Q. Have you head-tax certificate with you?

A. I lost it.

48 Q. Where did you lose it?

A. I lost it in the first month of this year (February, 1909).

Q. Under what name did you enter Canada at Vancouver?

A. Wong Yip.

Q. Was that the name in which your head-tax certificate was issued?

A. Yes, sir.

Q. What has been your occupation while you have been in Montreal?

A. Laundryman.

Q. When did you leave Montreal?

A. I started from Montreal on Tuesday of last week.

Q. Was there any other Chinese with you, and, if so, how many?

A. There were nine in the party.

Q. Where did you go from Montreal?

A. We were driven from Montreal to a small town. I don't know the name of it, and the next day we were driven again to the water's edge.

Q. Did you then board the boat?

A. Yes, sir.

Q. The same boat from which you were taken at Rouses Point last night?

A. Yes, sir.

Q. Was it your purpose to surreptitiously enter the United States?

A. Yes, sir.

Q. Did you intend to evade the United States officers?

A. Yes, sir.

Q. Where were you bound for?

A. The fat Frenchman asked me where I intended to go and I told him Boston.

Q. Was it the fat Frenchman who brought you from Montreal to this small town that you speak of?

49 A. Yes, sir.

Q. How much were you to pay for your entry into the United States?

A. One hundred and eighty dollars.

Q. To whom were you to pay it?

A. The money was to be sent to Yuen Sam, 42 Lagauchetiere Street, Montreal, and he in turn is to give it to the Frenchman.

Q. Where were you to be landed from the boat?

A. I do not know, sir.

Q. How many Chinese were placed aboard the boat?

A. Six, including myself.

Q. What became of the other three who started from Montreal with you?

A. Three of them returned.

Q. Were the five Chinese who were found on the boat at Rouses Point and brought from that place to Malone to-day members of the party which started with you from Montreal?

A. Yes, sir.

Q. Were you examined or questioned by any officers before you were taken from the hold of the boat at Rouses Point last evening?

A. No, sir.

Q. Do you desire to communicate with your friends to have them secure an attorney for you?

A. Yes, sir.

Q. Do you feel that the law should protect you in an effort to enter the United States without inspection when the law itself provides for inspection of aliens?

A. I thought it would be easier the other way.

Q. Have you answered questions asked you this evening freely and without duress or influence?

A. Yes, sir.

Q. Is there anything further you wish to say?

A. Nothing else.

Q. Have you understood the interpreter?

50 A. Yes, sir.

Q. Have you any property in the United States besides this laundry you say you own?

A. I have $30 or $40 in debts due me and that is all. I have no property.

Q. Have you a wife or family in the United States?

A. No, sir.

Q. Where is your home?

A. Woo Paing, Hoy Peng District, China.

Q. Have you a family there?

A. I have a wife, two sons, and one daughter living there.

Q. Were your father and mother both Chinese?

A. Yes, sir.

Q. Are you a Chinese?

A. Yes, sir.

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Q. Now, as a matter of fact, Wong Yip, weren't you born in Woo Paing?

A. No, sir; I was born in San Francisco. Woo Paing is my village in China.

(Alien signs stenographer's minutes in Chinese.)

(Chinese signature.)

MONTREAL, CANADA, *December 1, 1909.*

I hereby certify that the foregoing is a true and accurate transcript of stenographic notes taken by me on November 29, 1909, in the examination of Wong Yip, by Chinese and Acting Immigrant Inspector H. Edsell, at the U. S. immigration detention station, Malone, N. Y.

LOUIS OBER, *Stenographer.*

Chinese and Acting Immigrant Inspector.

51 Alien was again questioned by Inspector Edsell on November 30, 1909, at the Malone detention station, as follows:

Q. What steps have you taken to secure an attorney to represent you?

A. I have written to cousins of mine, asking them to attend to my case for me, and expect to hear from them in a few days. If they do not think it advisable for me to secure an attorney, I shall be prepared to return on the next steamer.

TREASURY DEPARTMENT,
Public Health and Marine-Hospital Service.

Medical certificate of release.

PORT OF MALONE, N. Y., *Nov. 30, 1909.*

Commissioner of Immigration:

This is to certify that Wong Yip, age , native of China, and who arrived Nov. 29, 1909, ex Canada, has been examined to-day and no medical cause for certificate found.

E. G. WHIPPLE,
Acting Asst. Surgeon, P. H. and M. H. S.

MALONE, NEW YORK, *November 30, 1909.*

From the foregoing evidence I, the duly authorized Chinese & acting immigrant inspector in said case, do find the following facts:

That said Wong Yip is an alien, namely, a subject of China; that he entered the United States surreptitiously, without examination under the immigration laws, at a place not designated as a port of entry under the immigration laws, and that he is in the United States in violation of laws.

Chinese & Acting Immigrant Inspector.

52 In the matter of the arrest of Ju Chong, Chinese alien, taken into custody near Rouses Point, N. Y., on November 28, 1909, on the ground that he had surreptitiously entered the United States from foreign territory without examination under the immigration laws, and at a point not designated as a port of entry under the immigration laws.

Examination of alien, November 29, 1909.

Description of alien: Age 26; height 5′ 6″ without shoes; mole one-quarter inch above left eyebrow; scar one-half inch above inner corner right eyebrow; speaks fair English.

Examining officers: H. Edsell, inspector; T. W. G. Wallace, interpreter; Louis Ober, stenographer.

In accordance with instructions contained in department warrant of arrest No. 52399/10, dated November 29, 1909, copy of which is hereto attached (marked "Exhibit A"), and made part of this record, Ju Chong was taken into custody at or near Rouses Point, N. Y., by Immigrant Inspector James Yale, and brought to the Malone, N. Y., United States immigration detention house, where a hearing was conducted by Chinese and Acting Immigrant In-

53 spector Edsell. Upon said Ju Chong's appearance he was informed that the purpose of said hearing was to allow him an opportunity to show cause why he should not be deported to the country whence he came, it having been alleged that he is an alien who entered the United States surreptitiously in violation of the immigration laws. Said Ju Chong was informed of his right to be represented by counsel, and he declared his intention to avail himself of the said right before being examined as to his entrance into the United States. The alien was then duly sworn and the following questions asked:

Questioned by Inspector EDSELL:

Q. Do you wish to be represented by attorney at this hearing?

A. I intend to engage an attorney and want to wait until I consult him first.

Q. You realize, do you, that in waiting for an attorney the disposition of your case will be delayed?

A. Yes, sir; I understand that.

Q. Is it your wish that no examination whatever take place until you have engaged counsel?

A. I do not wish to say anything.

Q. What is your full name?

A. My name is Ju E Chong, and my marriage name is Ju Fong.

Q. Are you the same Jue Chong, alias Ju Fong, who was rejected at this port and returned to Montreal on October 21, 1909?

A. Yes, sir.

Q. Were you returned to Montreal in custody of the Canadian Pacific Railway Company for deportation to China?

A. Yes, sir.

Witness excused.

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Witness recalled November 30, 11 a. m.

54 Questioned by Inspector in Charge EDSELL:

Q. What action have you taken toward securing an attorney to represent you?

A. I have written to cousins of mine asking them to secure me the services of an attorney.

Q. Are you aware of the fact that in the procedure wherein you were recently rejected as an applicant for admission at the port of Malone your attorney, James V. Storey, reviewed the record and decided not to appeal the case?

A. Yes.

Q. You still desire to obtain another counsel, do you?

A. Yes, sir. I have written to my cousins and they will see about securing an attorney for me, and if they advise me not to secure an attorney I am willing to be deported on the next boat.

I hereby certify that the foregoing is a true and accurate transcript of stenographic notes taken by me on November 29th and 30th, 1909, in the U. S. immigration detention station, Malone, N. Y., in the examination of Ju Chong by U. S. Chinese Inspector in Charge H. Edsell.

LOUIS OBER, *Stenographer.*

MALONE, N. Y., *November 30, 1909.*

Chinese & Acting Immigrant Inspector.

TREASURY DEPARTMENT,
Public Health and Marine-Hospital Service.

Form No. 8951.

Medical certificate of release.

PORT OF MALONE, N. Y., *Nov. 30, 1909.*

Commissioner of Immigration:

This is to certify that Ju Fong, alias Ju Chong, age ,
55 native of China, and who arrived Nov. 29, 1909, ex Canada has been examined to-day and no medical cause for certificate found.

E. G. WHIPPLE,
Acting Asst. Surgeon, P. H. and M. H. S.

MALONE, NEW YORK, *November 30, 1909.*

From the foregoing evidence I, the duly authorized Chinese and acting immigrant inspector in said case, do find the following facts: That the said Ju Chong is an alien, namely, a subject of China; that he entered the United States surreptitiously, without examination under the immigration laws, at a place not designated as a port

of entry under the immigration laws, and that he is in the United States in violation of law.

Chinese & Acting Immigrant Inspector.

DEPARTMENT OF COMMERCE AND LABOR,
BUREAU OF IMMIGRATION AND NATURALIZATION,
Washington, October 2, 1909.

52541/27

Memorandum for the Acting Secretary.

The bureau submits herewith for approval draft of a bureau circular amending rules 3 and 49 of the Chinese regulations so as to carry out the purpose already advocated by the bureau and approved by you and concerning which the solicitor has modified his former opinion standing in the way of the arrest of Chinese under the immigration law.

Upon very careful consideration it has been deemed best to amend rule 3 only in the particulars briefly set forth in the draft, and
56 to place so much of the new regulation as deals with arrest as an amendment to rule 49, the Chinese rule relating to deportation. It is thought that the convenience of the Chinese, as well as the ends of good administration, will be served by permitting and requiring the examination under both sets of laws and regulations to be made at the regular Chinese ports of entry.

As the draft varies slightly from the bureau's former recommendation, it is thought best to present with it this explanatory comment.

Respectfully,

(Signed) DAN'L J. KEEFE,
Commissioner General.

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DEPARTMENT OF COMMERCE AND LABOR,
BUREAU OF IMMIGRATION AND NATURALIZATION,
Washington, September 16, 1909.

52541/27

Memorandum for the Acting Secretary.

The attached file of papers relates to the question, "May a Chinese person, or a person of Chinese descent, found in the United States in violation of law, as having entered the country without inspection, fraudulently and surreptitiously, lawfully be deported pursuant to the provisions of the immigration act, and without reference to the provisions of the Chinese exclusion laws?"

On this question the solicitor held in the negative, under date of January 29, 1909. The bureau had, in a memorandum dated July 7, 1908, expressed a contrary view, at least to the extent of holding that the question was debatable with sufficient favoring the
57 contention that the immigration law does apply to surrepti-

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tiously-entered Chinese to justify making use of said law in handling such cases until the matter reached a test in the courts.

As the solicitor's opinion has never been adopted or promulgated by the department, as the commissioner of immigration in charge of the Canadian border has recently furnished a striking argument with respect to the administrative advantages that would accrue from handly smuggled Chinese by the method mentioned, and as the Circuit Court of Appeals for the Ninth Circuit has recently handed down an opinion in the Looe Shee case (170 Fed., 566,572), which decision at least tends to sustain the bureau's contention, I venture to again bring the matter to the attention of the department.

It is true, of course, that in the Looe Shee case the woman belonged to a distinct class of excludable aliens, viz, was a prostitute, but the language of the court is significant and is susceptible of application to the point under discussion. Thus the court said, after having stated the objection urged before it that the immigration act does not apply to Chinese persons because of the proviso to sec. 43 that nothing contained therein shall be construed to repeal, alter, or amend the existing Chinese exclusion laws:

"It is contended that Congress expressed its purpose in the Chinese exclusion acts that the immigration, residence, and exclusion of Chinese persons should be governed by the laws of Congress upon that subject, and not by the general laws regulating immigration. We can not agree to such a limitation to the act of February 20, 1907, which is entitled 'An act to regulate the immigration of aliens into the United States,' and by the terms of its various provisions applies to all aliens alike. To hold other wise would be to favor the
58 Chinese with respect to the admission of certain objectionable individuals, which could not have been the purpose of Congress."

The court then cited with approval the opinion of the Attorney General of March 3, 1903 (24 Op., 706), which opinion is quoted in the solicitor's memorandum, and which was also approved by the District Court for the Northern District of California in the case of Loe Cher Wing (164 Fed., 506).

Whatever refinement of reasoning may be indulged in arguing whether it is possible to apply to certain persons or certain objects general provisions of law when there exists special provisions applying to the same persons or objects, there is one fact in the practical circumstances of this matter from which it seems to the bureau there is no escape and which has not been accorded its deserved weight. It is conceded by all, and has been held by the Attorney General, by the District Court for the Northern District of California, and by the Circuit Court of Appeals for the Ninth Circuit, that a Chinese person who is afflicted with any of the diseases enumerated by the immigration statute, or is a member of any of the classes excluded thereby, cannot successfully maintain an application for entry because those diseases or those classes are not enumerated for entry because those diseases or those classes are not enumerated in the Chinese

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exclusion law. Why is this? Because he is an alien to the same extent and in the same degree that a Japanese or a German is. If the Japanese or the German seeks admission across the Canadin or Mexican border, he must apply at one of the ports of entry designated by the Secretary under sec. 36, and there show himself eligible. If he does not, but enters at some other point, that fact alone, without any regard to whether he can now, or could at the time of
59 entry, show himself eligible, renders his presence in the country unlawful and places upon the department the duty of deporting him. The bureau cannot see why, in the case of an alien so entering who happens to be Chinese instead of Japanese or German the fact that there is another law relating to him as a Chinese, but passed for a wholly distinct purpose from the general immigration act, should operate to relieve him of all stigma for his violation of such general statute. Such a holding, it seems to the bureau, is tantamount to saying that a person who violates two laws does not violate but one.

In the case of Seid Kin Sing, a Chinese stowaway who entered surreptitiously at Seattle and was apprehended in Portland, the department on June 23 last (before the publication of the Looe Shee decision) directed that a witness be issued on the ground that the alien had landed at a time and place other than that designated by the immigration officials and evaded the inspection required by law. This warrant was served, and after he had been given a hearing by the arresting inspector, at which hearing he was represented by counsel, who contented himself with entering of record an objection to the handling of the case under the immigration rather than under the Chinese exclusion law, and after being given a further hearing before the said officer, in which he waived the right of counsel and confessed his status as a stowaway, he was deported under department warrant July 15, 1909, on the ground that he was unlawfully in the country, having entered without inspection. This case illustrates how conveniently to the Government, and yet how justly to the Chinese, deportation can be effected under the immigration law, and the fact that counsel did not resort to a writ of habeas corpus on the point of his objection is somewhat significant.

60 The bureau believes that all the circumstances of this matter would justify the department in not adopting the opinion of the solicitor of last January, which it has not so far been adopted and contrary to which it has proceeded in the one instance above cited. This belief is based principally upon the fact that the Looe Shee decision, rendered since the solicitor's opinion, is susceptible to being construed as contrary to such opinion. The best way to promulgate a holding of the kind advocated by the bureau would be to so extend rule 3 of the Chinese regulations as to make it include by reference rules 24 and 26 of the immigration regulations, designating under sec. 36 ports of entry on the Canadian and Mexican borders, respectively, and to require that all Chinese aliens applying for admission to the United States shall be examined first under the various provisions of the immigration act, and if found admissible

thereunder shall then be examined under the Chinese exclusion laws. The publication of such a regulation would place all Chinese upon notice and would materially strengthen the department's hands when the matter reached the courts, as it undoubtedly would almost immediately.

Approved the foregoing Sept. 28–09.

(Signed) O. McH.

However, if the acting secretary does not feel that this course could with propriety be directed, the bureau suggests the alternative of issuing instructions to the commissioner of immigration, Montreal, under which, at the first opportunity to select a case the facts of which are favorable to the Government's contention, application shall be made for a warrant to be used on the grounds afforded by the immigration law. This would almost certainly result in resort to the courts, when the contention above set forth could be made.
61 The Government's position would, however, lack the support that would flow from the promulgation of a specific regulation requiring Chinese to submit to the immigration examination at one of the ports of entry.

Respectfully submitted.

(Signed) DAN'L J. KEEFE,
Commissioner General.

SEPTEMBER 28, 1909.

In re deportation of Chinese under the provisions of the immigration act, without reference to the Chinese-exclusion laws.

Referring to the question whether legal authority exists to cause the deportation of a Chinese person or person of Chinese descent, who has entered the country surreptit'ously, in accordance with the provisions of the immigration law rather than pursuant to the provisions of the Chinese-exclusion laws, I have read with care the attached memorandum of the Commissioner General of Immigration and the accompanying argument of the commissioner of immigration at Montreal, both in support of the existence of such authority.

While, for the reasons stated in my opinion of January 29, 1909, I am still pursuaded that a court would hold that deportation in such cases could be affected only in accordance with the statute in that behalf, specifically enacted and expressly applicable to the exclusion of a general statute which would otherwise apply, still this is a matter merely of opinion and on appeal to the courts the opposite view may prevail. The argument is certainly plausible that surreptit'ous entry of an alien Chinese person constitutes two separate and distinct offenses: (1) Evasion of the inspection provided by the Chinese-exclusion law by entering the country elsewhere than
62 at a port of entry for Chinese, and (2) evasion of the inspection provided by the immigration law be entering elsewhere than at a port of entry provided for aliens generally. Since such unlawful entry is followed by deportation, whichever law is vio-

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lated, although accomplished by different means, the argument is that the authorities may elect which law to proceed under in effecting deportation. It is possible that this view may be adopted by the courts.

Under the circumstances, therefore, if the department deems it advisable to assert the power in question it will proceed not without color of authority, and, probably, in accord with what may be determined to be a lawful mode of procedure.

Respectfully,

(Sgd) CHARLES EARL, *Solicitor.*

The honorable the SECRETARY OF COMMERCE AND LABOR.

DEPARTMENT OF COMMERCE AND LABOR,
BUREAU OF IMMIGRATION AND NATURALIZATION,
Washington, July 7th, 1909.

Memorandum in re proposition to arrest and deport under the provisions of the immigration act Chinese aliens who enter surreptitiously.

The origin of the proposition is a desire to secure the prompt removal from the United States of Chinese laborers who, despite the most vigilant watchfulness of the inspectors on the land boundaries, succeed in crossing into the United States and in safely reaching the interior. Those apprehended while crossing the line, or in such
63 close proximity thereto as to leave no doubt of their having just crossed, may, if thought in particular cases preferable, be handled promptly and efficaciously under the recent decision of the Circuit Court of Appeals, 2nd Circuit, in the test case of Chow Chok et al., brought by the department's special instructions in northern New York, which decision is hereinafter described more particularly and in which it is pointed out that Chinese apprehended when entering without inspection are not "Chinese persons found unlawfully within the United States," but are "aliens seeking admission to the United States," and are therefore subject to administrative examination without interference from the courts. Other reasons for the proposition are the desire to secure so close an administrative control by the department itself of the making of arrests of Chinese as will give assurance that no mistake will be made or injustice done, and the desirability of obtaining in the deportation of those found to have unlawfully entered more expedition than is possible through the machinery of the courts, and of reducing to a minimum the opportunities for fraud and perjury that are so extensive under the present method of handling such cases.

The practical necessity for inaugurating more extensive, comprehensive, and effective arrests is this: During recent years, i. e., since the boycott of American goods by the merchants of China, the arrest of Chinese in the interior of the United States has practically ceased, such arrests as have been made occurring principally in the districts

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immediately on or directly connected by lines of travel with the land boundaries. Thus, during the three years preceding the boycott, arrests were made as follows: In the fiscal year 1903, 1,420 Chinese were taken into custody throughout the United States,
64 the figures not having been kept by districts; in 1904, 1,793 arrests were made, of which (approximately) 1,034 were border and (approximately) 759 interior cases; and in 1905, 1,110, of which 639 were border and 471 interior cases; whereas in the three years since the boycott became serious, arrests have been made as follows: In 1906, 503, of which 435 were border and only 68 interior cases; in 1907, 503, of which 453 were border and only 50 interior cases; and in 1908 (nine months, for which figures available), 566, of which 504 were border and only 62 interior cases. The boycott became really embarrassing in the spring of 1905, and the policy of not making arrests in the interior was then started; hence, it will be noted the totals of arrests began to show a reduction in the report for the fiscal year 1905, and was much more reduced the following year. This policy of inactivity in the interior has created the impression in the minds of the Chinese smugglers that once those smuggled in have reached the interior they are safe from molestation by the Government; and thus it is feared all of the good work done at the ports in breaking up frauds and defeating subterfuges is likely to be offset by smuggling of laborers across the border and into the interior.

The laws and regulations applicable to the proposition may be stated to be, briefly and in effect, the following:

1. (a) Section 7 of the Chinese exclusion act of September 13, 1888, prescribing that Chinese laborers must reenter the United States, if at all, at the port of their departure, and that no Chinese, other than diplomatic and consular officers and their attendants, shall enter at any other ports than those named in the statute, or
65 such as may be designated by the Secretary; and rule 4 of the Chinese regulations designating additional ports of entry.

(b) Section 36 of the immigration act of February 20, 1907, requiring that "all aliens" shall enter at the seaports of the United States or at such land border ports as the Secretary may designate and rules 24 and 26 of the immigration regulations designating exclusive ports of entry in the Canadian and Mexican borders, respectively.

2. (a) Section 12 of the Chinese exclusion act of 1882–d, requiring that any Chinese person found unlawfully within the United States shall be expelled, after having been adjudged by a justice, judge, or commissioner of the United States court "to be one not lawfully entitled to be or to remain in the United States;" section 13 of the Chinese exclusion act of 1888, providing that any Chinese person found unlawfully in the United States may be arrested upon a warrant issued by a justice, judge, or commissioner, and, when, upon a hearing, convicted of such unlawful residence, shall be expelled; section 6 of the Chinese exclusion act of 1892, providing for registra-

tion and for the deportation of laborers failing to register upon conviction "before a United States judge;" section 1 of the Chinese exclusion act of 1901, providing that the United States attorney for the district in which any Chinese person may be arrested "for being found unlawfully within the United States, or having unlawfully entered the United States, may designate the commissioner before whom such person shall be tried; and rule 49 of the Chinese regulations, stipulating that "orders for the deportation of Chinese persons can be made only by a justice, judge, or commissioner of a United States court," etc.

66 (b) Section 36 of the immigration act, providing for the deportation, under the administrative procedure outlined in sections 20 and 21 of said act, of "all aliens who shall enter the United States except at the seaports thereof, or at such place or places as the Secretary of Commerce and Labor may from time to time designate;" sections 20 and 21 of the immigration act, providing that "any alien who shall enter the United States in violation of law" shall, "upon the warrant of the Secretary of Commerce and Labor" be deported, and that "in case the Secretary of Commerce and Labor shall be satisfied that an alien has been found in the United States in violation of this act, or that an alien is subject to deportation under the provisions of this act or of any law of the United States," he (the Secretary) shall effect the deportation of "such alien" and rule 31 of the immigration regulations, naming among the classes of aliens subject to arrest and deportation upon departmental warrants, "aliens who are found to have entered the United States or any other place than at the seaports thereof or at one of the ports or places designated" by the Secretary.

3. (a) Article 11 of the treaty with China of 1880, and the various provisions of the several exclusion laws passed in pursuance of said treaty, which have been construed by the courts and the department to mean what is stated in rules 1 and 2 of the Chinese regulations, viz:

"Rule 1. Under the provisions of the treaty and laws in relation to the exclusion of Chinese persons, only those who are teachers, students, travelers for curiosity or pleasure, merchants and their lawful wives and minor children, officials of the Chinese Government, together with their body and household servants, Chinese persons, registered under the laws of the United States, seamen, as pro-

67 vided in rule 32; those seeking in good faith to pass through the country to foreign territory, as provided in rules 33 and 37; and persons whose physical condition necessitates immediate hospital treatment, shall be permitted to land under said laws at any port of the United States.

"Rule 2. Only those Chinese persons who are expressly declared by the treaty and laws relating to the exclusion of Chinese to be admissible shall be allowed to enter the United States and those only upon compliance with the requirements of said treaty and laws and of regulations issued thereunder (22 Op. At. Gen., 132) * * *."

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(b) Section 1 of the immigration act, levying a tax of $4 "for every alien entering the United States," and section 2 of said act, enumerating the classes of aliens excluded from the United States.

(c) Rule 3 of the Chinese regulations, enforced since the date of the Attorney General's opinion, on which basis, viz. June 24, 1903, requiring that Chinese aliens shall be examined as to their right to admission to the United States under the provisions of the laws regulating immigration as well as under the laws in relation to the exclusion of Chinese persons. (24 Op. At. Gen., 706.)

4. (a) Section 43 of the immigration act, repealing "all acts and parts of acts inconsistent with this act" and providing "that this act shall not be construed to repeal, alter, or amend existing laws relating to the immigration or exclusion of Chinese persons," which section should be construed with a provision repealed thereby or by the same clause of the immigration act of 1903, viz:

(b) Section 10 of the immigration act of 1893, specifying "that this act shall not apply to Chinese persons."

68 5. The appropriation act of August 10, 1894 (23 Stat., 390), providing that "In every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made the decision of the appropriate immigration or customs officers, if adverse to the admission of such alien, shall be final unless reversed on appeal to the Secretary;" and the last proviso to section 25 of the immigration act of 1907, reenacting the above provision.

The opinions and decisions more or less applicable and interesting to the discussion are:

1. Opinion of Attorney General Knox, dated June 24, 1903, in which he held that the primary object of the immigration act of 1903 is to exclude from the United States aliens, irrespective of their rank or pursuit, whose presence would be dangerous to the public welfare; that the statute's general terms "include all aliens whose disabilities bring them within the classes of undesirables, and then, after quoting the proviso contained in section 36 of said act (in the same language as the proviso of section 43 of the immigration act of 1907, hereinbefore quoted), held further that "the history of our laws relating to Chinese immigration forbids the conclusion that the coming of any persons of that nation into the United States was regarded as more to be desired than that of other aliens or that special favors were intended to be shown them" and that to admit a Chinaman suffering from a contagious disease would defeat the legislative intent made clear by the terms of the act; that therefore the proviso mentioned was not intended to entirely prohibit the application of the immigration act to Chinese, but its object was "to prevent a misinterpretation of the repealing clause in the same section and to forestall any attempt to secure the admission of Chinese theretofore prohib-

69 ited from entering the United States under a claim that this act alone was intended to contain all provisions regulating the

immigration of all aliens" and repealed the Chinese exclusion among other laws; that the language of said proviso "is radically different from 'that this act shall not apply to Chinese persons,' the term used in the act of Mar. 3, 1893, and this change in language is inflictive of a little change of purpose;" and, finally, that, inasmuch as the Chinaman covered by the opinion was found to be suffering with a dangerous contagious disease, he belonged "to one of the classes of aliens which should be excluded from the United States" under the terms of the immigration act.

2. The memorandum opinion (No. 2376) of the Acting Solicitor of the Department of Commerce and Labor, dated December 29, 1907, in the case of Lee Kim Fong, in which the Bureau of Immigration and Naturalization had prepared a warrant, under the immigration laws, for the arrest of an alien of the Chinese race who had crossed surreptitiously from Mexico, which warrant, on the advise of the acting solicitor, was cancelled by the department. The written opinion in this case does not deal particularly with the matter of arresting a Chinese alien under the immigration laws, but the oral discussion of the case in the office of the Assistant Secretary did deal with that question, as is indicated by the letter of explanation written the inspector in charge at Tuscon January 4, 1907, and the view then expressed was that the immigration law could not be used for the purpose stated, in which view the bureau did not concur.

3. Memorandum opinion of the solicitor of the department (No. 2961) dated October 23, 1907, in the case of Ng Jew, a Chinese alien who had crossed the Mexican border surreptitiously and
70 for whose arrest, under the immigration law, application had been made. The solicitor held that the Chinese-exclusion laws operate upon all Chinese persons specifically as such; that the immigration law is aimed at certain classes of aliens, of whatever nationality, who are declared undesirable; that section 13 of the immigration act, providing "That this act shall not be construed to repeal, alter, or amend existing laws relating to the immigration or exclusion of Chi'ese persons," makes plain the intention of Congress that the system provided for in the Chinese-exclusion laws that "it is, moreover, as said by Mr. Justice Lemar, in and old and fair rule, that where there is in the statute a particular enactment and also a general one, which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be inoperative and the general enactment must be taken to effect only such cases within its general language as are not within the provisions of the particular enactment." That, therefore, in the case under consideration resort should be had to the Chinese-exclusion laws and not to the immigration law in effecting depor'tion.

4. Cases of the Chinese prostitutes Lew Gun Look and Chin Shee, in which, on September 13, 1907, under advice of the acting solicitor of the department, the Assistant Secretary issued warrants, drawn in accordance with sections 20 and 21 of the immigration act, for the

arrest of the said Chinese prostitutes. It was thought these cases would bring the question to a head in the courts, but the women escaped from Los Angeles and have never been apprehended. (Bureau file No. 51685/125.)

5. Opinion of the Supreme Court in Fong Yue Ting vs. United States (169 U. S., 698, 713) holdings.

71 "The power to exclude aliens and the power to expel them rest upon one foundation, are derived from one source, are supported by the same reasons, and are in truth but parts of one and the same power.

"The power of Congress, therefore, to expel, like the power to exclude aliens, or any specified class of aliens, from the country, may be exercised entirely through executive officers; or Congress may call in the aid of the judiciary to ascertain why contested facts on which an alien's right to be in the country has been made by Congress to depend."

6. Decision of the Supreme Court in Lem Hoon Sing vs. United States (158 U. S., 639, 547), in which the decision last above mentioned is reaffirmed, adding:

* * * Is a statute passed in execution of that power any less applicable to an alien, who has acquired a commercial domicil within the United States, but who, having voluntarily left the country, although for a temporary purpose, claim the right under some law of treaty to re-enter it? We think not. The words of the statute are broad and include "every case" of an alien, at least every Chinese alien, who, at the time of its passage, is out of this country, no matter for what reason, and seeks to come back. He is none the less an alien because of his having a commercial domicil in this country. While he lawfully remains here he is entitled to the benefit of the guaranties of life, liberty, and property, secured by the Constitution to all persons, of whatever race, within the jurisdiction of the United States. His personal rights when he is in this country and such of his property as is here during his absence, are as fully protected by the supreme law of the land as if he were a native or naturalized citizen of the United States. But when he has voluntarily

72 gone from the country, and is beyond its jurisdiction, being an alien, he cannot re-enter the United States in violation of the will of the Government as exercised in enactments of the law-making power." See also the Japanese Immigrant case (189 U. S., 86, 97).

7. Decision of the Supreme Court in United States vs. Sing Tuck (194 U. S., 161), United States vs. Ju Toy (198 U. S., 263), and Chin Yow vs. United States (208 U. S., 6), all of which reannounce the principle laid down in the Fong Yue Ting and other similar cases, and in which the court treated the three Chinese concerned not in particular as persons of the Chinese race, but as aliens to whom the act of August 18, 1894, hereinbefore quoted, applied as aliens.

8. Decision of the District Court, Northern District of New York, rendered May 12, 1908, and since affirmed by the Circuit Court of Appeals, but not yet reported, in which Judge Ray held that eight Chinese persons who crossed the border from Canada and were apprehended immediately after crossing by immigrant inspectors were not Chinese persons "found unlawfully in the United States," but were applicants for admission to the United States and were therefore subject to examination by the immigration officers without interference from the courts, citing as a part of the basis of his opinion the Fong Yue Ting and Lee Moon Sing cases, from which quotations have already been given.

The chief legal difficulty, therefore, consists of the two opinions, one by the acting solicitor, and the other by the solicitor of this department, above described. But this difficulty is more apparent than real, for the said two opinions quite evidently were rendered
73 upon consideration of the circumstances of the particular cases in hand, and not of the legal aspects of the proposition in its entirety. Moreover, it will be noted that said opinions are opposed by another expressed orally by the same office, which, while also applying to the circumstances of a particular case, is perhaps to be regarded as being based upon a consideration of the broad legal question involved, and also by an opinion of the Attorney General, which undoubtedly is intended to cover the entire subject, and which is binding until reversed by the courts, upon both the solicitor's office and this department.

The argument of this proposition—the practical situation to be met and the laws and regulations with which to meet it, under the guidance afforded by the Attorney General's opinion, and the several judicial decisions more or less directly in point cited, having been described—need, therefore, consist merely of a statement of the conclusions as to the scope and intent of the law, deduced from the law itself, its history, and a practical, common sense application of its principles and use of its various provisions, by the administrative branch of the Government charged with a general supervision with respect to all the statutes touching the matter, in such a manner as to best and most justly serve the purposes had in mind by Congress. This can best be done by setting out the practical questions of administration that arise in enforcing jointly the statutes relating to aliens generally and to Chinese aliens in particular, and amounting, in the light of the facts, laws, regulations, and decisions and opinions already quoted, the answers to such questions.

74 1. With respect to admission or rejection:

(*a*) If a Chinese alien applying for admission is afflicted with a loathsome or dangerous contagious disease, but is admissible under the Chinese exclusion laws, may he properly be allowed to enter the United States?

No—the obvious answer both of law and common sense.

(*b*) Must a Chinese alien, merely because he is a merchant rightfully in possession of a section six certificate, be admitted, although

he is insane, or has been convicted of an infamous crime, or falls within some other one of the inhibited classes?

No—again the obvious answer.

(c) May an alien, merely because he is a Chinese by race, expect to be lawfully examined and admitted at any other than a regularly designated port on the land boundaries?

Twice no; for he lies under a double obligation, imposed once because he is an alien and again because he is a Chinese alien, to present himself at a regularly designated port.

2. With respect to arrest and deportation:

(a) If a Chinese alien passenger afflicted with syphilis or pulmonary tuberculosis escapes from a vessel lying in a United States port and is apprehended in the interior later, must the immigration inspector sue out a warrant before a United States commissioner and bail the alien into court in order to effect his removal from the country?

No. The proper procedure is to secure a departmental warrant, just as though the alien were a German, or a Russian, or of any other nationality. The law cannot intend that, merely because he is a Chinese, he is to be permitted to remain here and infect others
75 with the disease, while the courts are determining whether he is deportable under the Chinese exclusion laws. "The history of our laws relating to Chinese immigration forbids the conclusion that the coming of any persons of that nation into the United States was regarded as more to be desired than that of other aliens, or that special favors were intended to be shown them (24 Op. At. Gen., 708)."

(b) If a Chinese alien admitted as a merchant on a regular section-six certificate subsequently becomes a public charge from prior existing causes (insanity, for instance), or is found after admission to be a person previously convicted of an infamous crime, or to have belonged at the time of admission to any of the inhibited classes, must the courts be used to effect his deportation?

No. His being a Chinese does not entitle him to special considerations or special favors under the law.

(c) May an alien, merely because he is a Chinese by race, expect to be permitted to violate the immigration law, applying, as has been seen, to all aliens, and after crossing into the United States surreptitiously, escaping inspection by failing to apply at a port of entry, be excused from rendering any account to the law, merely because, being a Chinese, it has been possible for him to violate two laws at once?

No; and here the climax of the legal aspects of the proposition is reached. The very statement of the question shows that there is no necessity for determining whether a particular or a general enactment of law is applicable, the general in its most comprehensive sense including the particular, and, therefore, according to the rule laid down by Mr. Justice Lamar in United States vs. Chase

76 (135 U. S., 260), to be taken to effect only such cases within its general language as are not within the provisions of the particular enactment. Here there are two separate and distinct statutes, the objects of which are wholly different, all of the provisions of which, both general and particular, must apply; the one statute because the person affected is an alien, and the law says aliens must submit to examination at regularly designated ports of entry for the purpose of allowing an ascertainment whether or not they are afflicted with certain diseases or fall within certain classes, and the other statute because the person affected is a Chinese, and the law requires that Chinese shall come in only in certain ways. In fact, the rule stated by Mr. Justice Lamar aids the conclusion that both statutes apply, for the very reason that the general provisions of neither statute include the particular provisions of the other.

The mere statement of the question also makes it perfectly plain that, by incorporating in section 43 of the immigration act the proviso, "That this act shall not be construed to repeal, alter, or amend existing laws relating to the immigration or exclusion of Chinese persons," Congress did not intend that the system of enforcing the very act it was then attempting to put into operative form should not apply to certain race of aliens merely because a different system, having in view different objects, might occasionally and incidentally, or rather accidentally, effect the same objects. In fact, as pointed out by the Attorney General, the intention was, in part, the opposite; for Congress did not say, as in the act of 1893, "this act shall not apply to Chinese," but merely that the act should not be construed as repealing, amending, or altering the laws relating to Chinese. The act is by reiteration in its terms throughout applicable to "all aliens." Is arresting a surreptitiously entered alien, who happens to be of

77 the Chinese race, under the terms of such a comprehensive act, in effect altering or amending a different act? Not at all. It is doing nothing to or with the other act. It is accomplishing a different object with a different law intended to accomplish that very object, which the other did not have in view. When the immigration act of 1893 was passed, the idea of excluding aliens was in its infancy, while the exclusion of Chinese had been an accomplished fact for a decade; whereas with the immigration act of 1903 (and 1907) the restrictions, with respect to aliens generally, in many and new respects advanced beyond the exclusion laws. This undoubtedly accounts, in part at least, for the change in the wording of the clause. Could it be said that a head tax of $4 is not collectible on account of an alien merely because he happens to be a Chinese and the exclusion laws do not say anything about head tax, and the immigration law must not be construed to alter or amend the law relating to the "immigration or exclusion of Chinese?" Hardly; and the practice is to collect the head tax for every Chinese alien.

The chief practical difficulties that will undoubtedly be encountered in applying the proposition will be the following:

(1) The necessity when dealing with Chinese of making an arrest immediately that the unlawfully resident alien is encountered—of keeping the alien under surveillance until a warrant is received. Chinese are abnormally suspicious, and the least investigation of the case of one who is aware of his unlawful status leads to his going into hiding or removing to another locality. This can be partly overcome by the use of telegraphic warrants of arrest, confirmed in writing under seal.

(2) Very few Chinese recently entered will admit that fact,
78 and most of them (judging by past experience) will have no difficulty in producing almost unlimited Chinese testimony to prove long residence in the locality where apprehended. This will have to be met as the circumstances of each case render best; and if unable to overcome the Chinese testimony, resort might finally be had to arrest under the Chinese exclusion laws and the usual court procedure, if the department thought the evidence before it justified such course.

(3) It would be practically useless to deport to Canada and Mexico Chinese entering from those countries without inspection; for they would come back at once. Section 35, providing that the deportation of aliens arrested within the United States after entry through (or from) foreign contiguous territory shall be to the transoceanic port of embarkation for such territory, would have to be given, therefore, the very widest latitude possible.

(4) To make the proposition really effective, as a deterrent to smuggling, the officers in charge in the interior cities having large "Chinatowns" would have to be constantly vigilant to apprehend new arrivals, and would have to keep, through their inspectors and interpreters, in close touch with the Chinese population. If properly handled, however, this ought to be accomplished without just cause for complaint.

To sum up the entire matter:

1. The conditions now existing with regard to smuggling of Chinese aliens into the United States require that a more vigorous and effective method of making arrests of such aliens shall be inaugurated.

2. The proposition to make such arrests under the immigration instead of under the Chinese exclusion laws is sound legally
79 so long as it is confined strictly to enforcing only the provisions relating to "all aliens."

3. The practical difficulties to be encountered, while great, can be overcome by a careful administrative provision.

4. The proposition, therefore, is at least worth a trial.

(Signed) A. WARNER PARKER,
Chief, Law Division.

(Endorsed:) Exhibits, G. W. R., U. S. J. Filed Mar. 15, 1910. W. S. Doolittle, clerk.

United States District Court, Northern District of New York.

In the matter of the application of Wong You, Wong Cheen (Wong Chun), Hoen Chee (Hom Chee), Wong Mon Sue (Wong Yip), and Ju Fong, for a writ of habeas corpus.

Petition for writs of habeas corpus for alien Chinese held on orders of deportation made under immigration laws.

H. E. Owen for the United States; B. W. Berry for petitioners.

RAY, District Judge:

As to Hoen Chee, or Hom Chee, the writ has been dismissed
80 and the petitioner remanded, as his case has not been passed upon by the Commissioner of Commerce and Labor.

Wong You and Wong Cheen, or Wong Chun, were taken into custody on the 22d day of October, 1909, at Utica, N. Y., and Wong Mon Sue, or Wong Yip, and Ju Fong were taken into custody November 28th, 1909, at Rouses Point, N. Y., on the allegation they and each of them were alien Chinese persons and had entered the United States surreptitiously from the Dominion of Canada at a point not designated as a port of entry and without having produced a certificate of admission or having been examined or inspected as required by the immigration laws and regulations of the United States, and had unlawfully entered and were unlawfully in the United States in violation of section 36 of the act entitled "An act to regulate the immigration of aliens into the United States," approved Feb. 20, 1907, such entry having been made a few days prior to the dates mentioned. When so taken into custody these Chinese aliens had not settled down and become a part of the resident population of the United States, not having reached their respective place of destination in the United States. Soon thereafter warrants for the arrests of said persons were issued by the Secretary of Commerce and Labor under the provisions of the immigration laws of the United States and the rules and regulations of the said Department of Commerce and Labor, and they were arrested and held thereunder and given opportunity for a full and a fair hearing and opportunity to show cause why they should not be deported under the provisions of said immigration laws and to have counsel. A full and fair hearing was had and all evidence offered was taken and duly considered, and thereupon it was held and decided that said Chinese persons were aliens and had very recently entered the United
81 States surreptitiously and in violation and defiance of law, as aforesaid, and were therefore unlawfully in the United States in violation of law. All the proceedings and testimony were duly transmitted to the Secretary of Commerce and Labor. The law as to a hearing was in all respects complied with and the Acting Secretary of Commerce and Labor held that such Chinese persons were aliens and that each of them entered the United States in violation of section 36 of the immigration laws, viz, act of Congress, approved

Feb. 20, 1907, and rule 24 of the immigration regulations, and were in the United States when arrested, in violation of law and unlawfully and had entered unlawfully. On the 17th day of November, 1909, the Secretary of Commerce and Labor made and issued a warrant of deportation under said act, sections 36, 20, and 21, as to Wong You, Wong Cheen, or Wong Chun, and on the 4th day of January, 1910, made and issued a like warrant as to Wong Mon Sue, or Wong Yip, and Ju Fong. At the time the writ of habeas corpus was issued herein said named persons, so ordered deported, were in the custody of S. R. Horton, Chinese inspector and inspector of immigration, under such orders and judgments of deportation, to whom they had been delivered for the execution of same. The warrants for the deportation of Wong Cheen, or Wong Chun, and Wong You recite that such persons are aliens; that they entered the United States in violation of section 36 of the said act, immigration laws, approved Feb. 20, 1907, and rule 24 of the immigration regulations, and without being inspected under any of the provisions of said act, and commands that they be deported and returned "to China, the country whence he came." In the case of Wong Mon Sue, or Wong Yip, and Ju Fong, the recitations of the warrants are substantially the same, but it does not in terms command or direct that
82 such persons be deported or returned to China, but "to the country whence he came." However, the commissioner is directed to purchase transportation for them from Malone, N. Y., to China.

It will be noted that these proceedings have been had under the provisions of the immigration laws and immigration rules and regulations. The petitioners claim that these proceedings and warrants of deportation issued are null and void, and were made or granted without jurisdiction; that the immigration laws (the act referred to) have no application to Chinese aliens; that such aliens when found in the United States, regardless of how or when they came, must be arrested and dealt with under the provisions of the Chinese exclusion acts and taken before a United States judge or commissioner who alone may deport Chinese aliens, and that, in any event, as these Chinese aliens, concededly, came from the Dominion of Canada into the United States, they must be returned to Canada, and that the warrants of deportation are void and made without jurisdiction, in that they command a deportation or return to China and not to Canada, which it is claimed is the country whence they came.

The hearings given, or trials had, were in all respects full and fair. There has been no unfair or arbitrary or unlawful action or conduct, provided the Department of Commerce and Labor had jurisdiction to deal with these persons at all under the immigration laws, and deport them to China or to any place. I do not doubt the right and power of the Department of Commerce and Labor to deal with these persons, Chinese aliens, under and in conformity with the provisions of the said immigration laws and the rules and regulations which are in aid thereof and supplementary thereto and authorized thereby.

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1. These persons are aliens.

83 2. They entered the United States surreptitiously, not at a port of entry, and without inspection or examination. They entered in defiance and in violation of law. They came with the intention of remaining.

3. They placed themselves in the United States by violating our laws; by their own unlawful acts, and cannot, therefore, be heard to say they are not here in violation of law, or unlawfully.

4. They came into the United States in violation of the immigration act or laws, and, being aliens, were and are subject to its provisions.

5. Chinese aliens are not exempt from the provisions of the immigration laws, rules, and regulations.

6. The two acts may be enforced together and are not inconsistent with each other. The immigration act does not repeal the Chinese exclusion laws or any part thereof.

In Ex parte Li Dick, 174 Fed. R., 674, the court had occasion to pass upon and decide all the questions raised here, except that of the place or country to which such alien Chinese persons so unlawfully entering and found within the United in violation of the immigration laws shall be deported. I adhere to what was there actually decided and will not repeat it here. I also discussed the other question, but left it undecided, as it was not necessarily involved. What was said on the subject was by way of suggestion that the immigration laws are fully applicable to such cases and fully operative in all cases, except that, if in such a case as this the Dominion of Canada is held to be "the country whence he (the alien) came," and Canada

84 will not receive the person ordered deported, then the exclusion laws must be resorted to.

Chinese aliens may come to the United States and enter in violation of our immigration laws by several different routes; as, for instance, one may embark at Hong Kong for the United States direct and land surreptitiously and enter unlawfully at San Francisco. In such case there is no question that China is "the country whence he came" and to which he must be deported. Another may embark at Hong Kong for the United States as his destination, but land at Vancouver, the destination of the vessel, and then come by rail to Montreal, remain a month, and then cross the border into the United States surreptitiously and in violation of law, as was done in the Li Dick case, supra. If the United States was his intended destination when he left China, is there any substantial reason why China should not be held to be "the country whence he came?" True, he did not come direct and land in the United States, but he came from China to the United States as he intended to do, passing through Canada on his way. Another embarks from China for Canada with no intention of coming to the United States. He lands in Canada, complies with its laws, and remains two or five years, when he makes up his mind to come to the United States and does so, entering surreptitiously and in violation of our immigration laws. Is China or the Dominion

of Canada "the country whence he came?" Before considering these questions in their legal bearings and the statutes applicable we will ascertain the exact status of these petitioners, as shown by the evidence.

Wong You embarked at Hong Kong for Canada intending to come to the United States, that being his destination, but he intended and expected to first land in the Dominion of Canada and then
85 stop a little time at Montreal. He did remain at Montreal about two months without changing his purpose to come to the United States and then continued his intended journey to the United States by automobile, entering surreptitiously at a point distant from a port of entry and without inspection and in violation of law, and was taken into custody at Utica, northern district of New York, within a day or so, and before he had actually settled down so as to become a part of our resident population. He was in fact unlawfully in the United States, having come across the borders in violation of law. He was not in the act of entering as were the Chinese aliens considered in Ex parte Chow Chok, 161 Fed. R., 627, affirmed by C. C. A., 163 Fed. R., 1021.

Wong Cheen, or Wong Chun, embarked at Hong Kong for Canada, where he landed and remained about a year before surreptitiously entering the United States with Wong You. It does not affirmatively appear by admission or direct evidence that he intended, when he embarked at Hong Kong, to come to the United States; neither does it appear that he did not, and we are to ascertain his intent and purpose from what he actually did. He entered the United States, as stated, with a relative from his native village in China, who left China, intending to come to the United States and who did come, "picking up" Wong Chun on the way. I think it a fair inference from all the facts that Wong Chun left China for the United States, embarking for Canada and landing there, and was temporarily in Canada, en route, awaiting the arrival of his relative and a favorable opportunity to enter the United States surreptitiously and in violation of law, which he in fact did. Time in such a case is somewhat material, but Wong Chun did nothing while in Canada tending
to show that his purpose or intent was other than to do
86 what he eventually did do, surreptitiously enter the United States in violation of our immigration laws.

Wong Yip, or Wong Mon Sue, left the United States about three years ago and went to China with the intention of returning to the United States. He returned by way of Canada, embarking from a port in China, and then surreptitiously entered the United States from Canada, not at a port of entry, intending to evade inspection and examination, which he did. His is a plain case of coming from China into the United States, by way of Canada on a continuous journey, in violation and defiance of law. He was not of a class free to come and go.

Ju Fong, or Jue Chong, applied for admission into the United States and was rejected, and returned to Montreal on or about the

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21st day of October, 1909. He thereupon paid the head tax required in Canada, and thus gained the right to be and remain in Canada. He was not naturalized, and did not become a subject of the Kingdom of Great Britain and Ireland. If this action on the part of Ju Fong was in pursuance of a scheme on his part to obtain entrance into the United States surreptitiously and in violation of the immigration laws and rules of the United States, and in pursuance of such scheme and in execution thereof he did so enter the United States, his must be regarded as a continuous journey from China, where he embarked for Canada to the United States. It was but a repetition of his efforts to enter in pursuance of his intention formed on leaving China, the first of which failed. All of these persons came into the United States from contiguous foreign territory by land, but their so coming was part of a continuous journey from China to the United States, with intent to emigrate to the United States, and they
87 came with intent to remain here and become, not citizens, but a part of our resident population.

Section 20 of the immigration laws, already referred to, provides: "That any alien who shall enter the United States in violation of law * * * shall upon the warrant of the Secretary of Commerce and Labor be taken into custody and deported to the country whence he came at any time within three years after the date of his entry into the United States."

Section 21 of the act provided "That in case the Secretary of Commerce and Labor shall be satisfied that an alien has been found in the United States in violation of this act, or that an alien is subject to deportation under the provisions of this act, or of any law of the United States, he shall cause such alien within the period of three years after landing, or entry therein, to be taken into custody and returned to the country whence he came, as provided by section 20 of this act," &c.

Section 22 provides that the Commissioner General of Immigration shall, under the direction of the Secretary of Commerce and Labor, have charge of the administration of all laws relating to the immigration of aliens into the United States, and he is to make and enforce rules and regulations relating thereto, not inconsistent with law.

Section 32 provides that such Commissioner General, subject to approval by the Secretary of Commerce and Labor, "shall prescribe rules for the entry and inspection of aliens along the borders of Canada and Mexico, so as not to unnecessarily delay, impede, or annoy passengers," &c.

Ports of entry for aliens have been designated by law and
88 examination and inspection provided for, and it is unlawful for an alien to enter the United States except at a port of entry and on complying with the law as to inspection, &c. Subdivision d of rule 31 says the following may be deported:

"(d) Aliens who are found to have entered the United States at any other place than at the seaports thereof or at one of the ports of places designated in rules 24 and 26 hereof, and aliens found to have

enterd at a seaport, but at any time or places other than as designated by the immigration officers (secs. 18, 38)."

Rule 38 reads:

"Rule 38. Deportation, where to. The deportation of aliens as prescribed in rules 30 to 36 hereof shall be to the foreign trans-Atlantic or trans-Pacific port from which such aliens embarked for the United States; or, if such embarkation was for foreign contiguous territory, to the foreign port at which they embarked for such contiguous territory (sec. 35)."

Section 36 of the immigration law reads as follows:

"SEC. 36. That all aliens who shall enter the United States except at the seaports thereof, or at such place or places as the Secretary of Commerce and Labor may from time to time designate, shall be adjudged to have entered the country unlawfully and shall be deported as provided by sections twenty and twenty-one of this act: *Provided*, That nothing contained in this section shall effect the power conferred by section thirty-two of this act upon the Commissioner General of Immigration to prescribe rules for the entry and inspection of aliens along the borders of Canada and Mexico."

89 The provisions of law referred to make it unlawful to enter surreptitiously and in evasion of the law, and when an alien so unlawfully enters he is, of course, unlawfully in the United States. There is no question that an alien of any nationality who so enters violates the immigration laws referred to, and that all such aliens, unless it be a Chinese alien, are subject to deportation under the provisions of those laws, on the warrant of the Secretary of Commerce and Labor. However, he is to be returned to "the country whence he came."

If, then, a Swiss immigrant, intending to come to the United States and remain and live here, leaves Switzerland and passes through France, making a month's tarry at Paris, on his way to a seaport, and then, at such seaport in France, embarks for New York in the United States and on arrival at that port unlawfully enters in violation of law, is he, if arrested, tried, and ordered deported, to be taken or returned to France or to Switzerland?

Section 35 of the immigration act provides as follows:

"SEC. 35. That the deportation of aliens arrested within the United States after entry and found to be illegally therein, provided for in this act, shall be to the trans-Atlantic or trans-Pacific ports from which said aliens embarked for the United States; or, if such embarkation was for foreign contiguous territory, to the foreign port at which said aliens embarked for such territory."

The Swiss alien just mentioned, having embarked at a port in France for the United States, must be returned or deported to the port of France at which he embarked, as that would be "the trans-Atlantic port from which" such alien "embarked for the United States." Now, suppose such Swiss alien embarked at the

90 French port for Canada, contiguous foreign territory, and there landed, and then surreptitiously entered the United States

from Canada in pursuance of the intent and purpose formed on leaving Switzerland in violation of law and was thereafter arrested, tried, and ordered deported, can there be any question that he is to be taken or deported to the French port at which he embarked for the United States? I think not. To hold otherwise would be to disregard the express mandate of section 35, just quoted. It is evident, I think, in the light of this section, that the words "deported to the country whence he came" and "returned to the country whence he came," as found in sections 20 and 21, are to be construed and held as meaning the country in which is situated the trans-Atlantic or trans-Pacific port from which the alien embarked for the United States in all cases where such alien did embark at some trans-Atlantic or trans-Pacific port for the United States, regardless of the country which he left for the purpose of coming to the United States, and also regardless of the countries through which he passed on his way to such port of embarkation, and also regardless of the fact that he embarked for and landed in foreign contiguous territory and then unlawfully entered the United States from such foreign contiguous territory. Or, we may say that section 35 is to be construed as a proviso or exception to the provisions of sections 20 and 21, and as qualifying those provisions as to the place to which deportation shall be made in certain cases, viz, those mentioned in section 35. If we hold that the words "the country whence he came" mean, in all cases, the immediate foreign country from which the alien came unlawfully into the United States, we disregard and nullify section 35. If we hold that the words "the country whence he came" mean, in all cases, the country in which the alien was domiciled, or
91 of which he was a citizen when he formed the intent or purpose of coming to the United States and which country he left for the United States, making a continuous journey but embarking for the United States at some trans-Atlantic or trans-Pacific port, not in the country of his domicile or of which he was a citizen, we also disregard and nullify the provisions of said section 35 in such a case as that supposed—the Swiss alien and many others. I am of the opinion that sections 20, 21, and 35 of the immigration laws are to be read and construed together, section 35 qualifying and limiting the two former sections. By this construction we do no violence to either section but give effect to each and all of them.

These four Chinese aliens whose cases are now being considered embarked from Hong Kong, China, a trans-Pacific port, for the Dominion of Canada, which is foreign contiguous territory, and there landed. Their destination, however, was the United States, and to the United States they came after landing in Canada and without having become actually and bona fide domiciled there or citizens of that foreign country. It so happens that they are citizens of China, the country in which they lived and formed the intent of coming to the United States and from which they embarked for the purpose of coming to the United States by way of Canada. They are to be deported to Hong Kong, in China, not because they are citizens

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of China, or for the reason they left China for the United States by way of Canada, but for the reason that they embarked for foreign contiguous territory from a trans-Pacific port, intending to come to the United States through or by way of such foreign contiguous territory, and entered the United States unlawfully. Section 35 quoted says, "arrests within the United States after entry and found to be illegally therein," &c. It has been suggested that there is
92 significance in the words "after entry" and that these words suggest a regular entry into the United States in the regular way, but that some fraud was practiced in obtaining such entry so that the person is illegally in the United States, and that the section is applicable to such cases only. I see no force in such contention. I think the section applies to all aliens, coming within its provisions, found to be illegally in the United States because of the fact they entered in violation of the immigration laws. To come within the provisions of section 35 the alien person or persons must have embarked for the United States from some trans-Atlantic or trans-Pacific port; or from one of such ports to foreign territory contiguous to the United States, and must, after landing, have entered the United States in violation of the immigration laws and have been found therein (within three years of his entry), in which case he is to be "adjudged to have entered the country unlawfully and shall be deported as provided by sections twenty and twenty-one of this act," as qualified by section 35, which must be read in connection therewith. In construing statute it is to be taken as a whole. It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word, and that every part of a statute must be construed in connection with the whole, so as to make all the parts harmonize, if possible, and give meaning to each. Washington Market Co. v. Hoffman, 101 U. S., 112. Statutes are to be so construed, if practicable, that one section will not defeat or destroy another, but explain and support it. Bernier v. Bernier, 147 U. S., 242, 13 Sup. Ct., 244. The intention of the legislature, when properly ascertained, must govern in the construction of every statute, and single sentences and single provisions are not to be selected and construed by themselves, but the whole statute must be
93 examined and all its provisions construed together. Pollard vs. Bailey, 20 Wall., 520. When we read sections 20, 21, and 35 all together and in connection with the others there is no doubt of the intent and effect. Section 20 uses the words "who shall enter the United States in violation of law." Section 21 uses the words "has been found in the United States in violation of this act." Section 35 says "found to be illegally therein." Section 36 says "shall be adjudged to have entered the country unlawfully." I think that where an alien of any nationality, including a Chinese alien, is found in the United States in violation of the immigration laws and is found to have gained entrance by violating those laws and the rules duly made, which have the force of law, he is to be adjudged to

have entered the country unlawfully and deported on the warrant of the Secretary of Commerce and Labor to the country whence he came, viz, Brazil, if he was a resident and domiciled there and came by land, or to France if he came from Switzerland by way of France and then embarked for the United States and landed there, or embarked for Canada and came thence into the United States; or to China, if he embarked at a port in China for the United States and landed in the United States, or embarked in a port in China for any contiguous foreign territory, as Canada or Mexico, and came thence into the United States pursuant to a design to do so formed at or before leaving China or even on the voyage.

In the Chow Chok case, 161 Fed. R., 627, affirmed by the Circuit Court of Appeals, the Chinese aliens were apprehended in the very act of crossing the border from Canada into the United States, taken before a Chinese inspector and admission denied. On habeas corpus this court held that such persons were not found unlawfully in the United States within the meaning of the Chinese exclu-
94 sion laws, as they were in the act of entering when taken into custody, and that the inspector had jurisdiction, and the persons were remanded. Instead of treating them as persons merely seeking admission and refusing them admission and turning them back to Canada, the inspector sought to deport them to China, and they were taken to Hoboken, New Jersey, for the purpose of taking them to China. On habeas corpus in the District of New Jersey, Third Circuit, it was held that the decision of this court was res adjudicata and they must be returned to Canada, not having been found unlawfully in the United States. Lui Lum et al. v. United States, 166 Fed. R., 106. I find no point actually decided in those cases in conflict with the views here expressed. The inspector had jurisdiction to exclude Chinese aliens found and arrested in the very act of entering the United States, whether they formally applied for admission or not. Being denied admission, they were to be turned back and prevented from entering, and the fact that they failed in an effort to enter the United States in violation of our laws did not subject them to the penalty of being sent to China. If a Chinese alien comes to a regular port of entry on the Canada border and asks admission, or is taken there to determine his right to enter, and is denied admission, he is simply turned back. He has not subjected himself to any penalty, or forfeiture, or punishment, and cannot be subjected to any. Here we have a different situation. These Chinese persons were actually within the United States, on out territory distant from the border, and had gained such points in the United States before being apprehended, and, on the evidence, it has been duly adjudicated by the inspector and by the Department of Commerce and Labor that such persons were and are unlawfully in the United States, having entered in violation of law—that is, in
95 violation of our immigration laws. This finding was based on sufficient and competent evidence and cannot be disturbed by

the courts. Chin Yow v. United States, 208 U. S., 813. The result is that deportation follows, and that deportation is regulated and determined as to the country to which made by section 35 of the immigration act of February 20, 1907, hereinbefore quoted.

The writ is dismissed and the petitioners remanded.

(Indorsed:) Opinion. Geo. W. Ray, U. S. judge. Filed Mar. 15, 1910. W. S. Doolittle, clerk.

At a special term of the District Court of the United States, held at the chambers of the district judge, in the village of Norwich, N. Y., on the 25th day of February, 1910.

Present: Hon. George W. Ray, U. S. judge.

United States District Court, Northern District of New York.

In the matter of the application of Wong You, Wong Chun, Hom Chee, Wong Yip, and Ju Fong for a writ of habeas corpus.

Upon the petition for a writ of habeas corpus herein filed and the writ of habeas corpus thereon issued, and the return thereto
96 also filed, and after hearing Harry E. Owen, ass't U. S. attorney, for the United States, and B. W. Berry, esq., of counsel for the petitioner, it is, on motion of Harry E. Owen, ass't U. S. attorney,

Ordered that the writ of habeas corpus issued in the above-entitled matter, so far as it affects the petitioner Hom Chee, be, and the same is hereby, dismissed, and the petitioner, Hom Chee, is hereby remanded back to the custody of E. G. Sperry, Chinese inspector in charge of the dentention station at Malone, N. Y., to be dealt with according to law.

GEO. W. RAY, *U. S. Judge.*

(Indorsed:) Order dismissing writ. Filed Mar. 2, 1910. W. S. Doolittle, clerk.

97 At a term of the District Court of the United States, held at the chambers of the judge in the village of Norwich, New York, in and for said District, on the 25th day of February, 1910.

Present: Honorable George W. Ray, district judge.

In the matter of the application of Wong You, Wong Cheen (Wong Chun), Hoen Chee (Hom Chee), Wong Mon Sue (Wong Yip), and Ju Fong, for a writ of habeas corpus.

Upon a petition of a writ of habeas corpus herein filed on or about the 26th day of January, 1910, and such writ of habeas corpus issued January 26, 1910, and the return thereto, including exhibits filed in connection with same; and after hearing H. E. Owen, assist-

ant United States attorney, for the United States, and B. W. Berry, for the petitioners; and the court having handed down its opinion, and on motion of H. E. Owen, assistant United States attorney,

Ordered, that the writ of habeas corpus issued in the above-entitled matter January 26, 1910, be, and the same is, hereby dismissed; and that the petitioners, Wong You, Wong Cheen (Wong Chun), Hoen Chee (Hom Chee), Wong Mon Sue (Wong Yip), and Ju Fong, be, and they hereby are, remanded back to the custody of S. R.
98 Horton, Chinese inspector and inspector of immigration, and to such inspector as has them in charge, to be dealt with according to law.

Enter.

GEO. W. RAY, *U. S. Judge.*

MARCH 15, 1910.

(Indorsed:) Order dismissing writ and remanding persons. Filed Mar. 15, 1910. W. S. Doolittle, clerk.

United States Circuit Court of Appeals, Second Circuit.

In the matter of the application of Wong You, Wong Chun, Hom Chee, Wong Yip, and Ju Fong for a writ of habeas corpus.

The petitioners above named, through their attorney, B. W. Berry, feeling aggrieved by the order dismissing the writ of habeas corpus herein made and entered on the 15th day of March, 1910, by the Hon. George W. Ray, judge of the United States District Court, do hereby appeal from said order and decision to the Circuit Court of Appeals for the Second Circuit, and prays that their appeal may be allowed, and that a copy of the record of proceedings and papers upon which decision and order is made, duly authenticated, may be sent
99 to the Circuit Court of Appeals for the Second Judicial Circuit of the United States.

Dated New York, March 23rd, 1910.

B. W. BERRY,
Attorney for Defendants, Malone, New York.

United States Circuit Court of Appeals, Second Circuit.

In the matter of the application of Wong You, Wong Chun, Hom Chee, Wong Yip, and Ju Fong for a writ of habeas corpus.

And now, to wit, on the 24th day of March, 1910,

It is ordered, that the appeal be allowed as prayed for, and

It is further ordered, that the judgment appealed from be stayed until the hearing and determination of said appeal.

ALFRED C. COXE,
United States Judge.

100 United States Circuit Court of Appeals, Second Circuit.

In the matter of the application of Wong You, Wong Chun, Hom Chee, Wong Yip, and Ju Fong for a writ of habeas corpus.

Afterwards, to wit, on the 24th day of March, 1910, before the honorable judges of the Circuit Court of Appeals for the Second Circuit of the State of New York, come the defendants in the above named proceeding by their attorney, B. W. Berry, and say that in the record of proceedings aforesaid there is manifest error, and that the order and decision appealed from above is erroneous, as follows:

That the said order made on the 15th day of March, 1910, dismissing the writ of habeas corpus in the above-entitled proceeding in erroneous and contrary to law and contrary to the evidence in the case; and that the said order should have sustained the writ and ordered the discharge of the defendants, for the reason that the said immigrant inspector and the said Department of Commerce and Labor had no jurisdiction or authority in law to make an order directing the deportation of the petitioners to the Empire of China, and that the said inspector and the said Department of Commerce and Labor had no authority in law to hold and detain the said petitioners in custody at Malone, New York; and that the said inspector
101 and the said Department of Commerce and Labor had no authority or jurisdiction to make the order deporting the petitioners to the Empire of China.

Wherefore, by the law of the land, the defendants should have been discharged, and the defendants now pray that the order made by the Hon. George W. Ray, judge of the District Court, be reversed, and that the petitioners be discharged, and for such other relief in the premises as may be proper.

B. W. BERRY,
Attorney for Defendants, Malone, New York.

(Indorsed:) Notice of appeal. Allowance of appeal. Order and assignment of errors. Filed Mar. 25, 1910. W. S. Doolittle, clerk.

102 United States Circuit Court of Appeals, Second Circuit.

In the matter of the application of Wong You, Wong Chun, Hom Chee, Wong Yip, and Ju Fong for a writ of habeas corpus.

UNITED STATES OF AMERICA,
Second Judicial Circuit, ss:

To the district attorney for the Northern District of New York:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Second Circuit, to be holden at the city of New York, in said circuit, on the 4th day of April, 1910, pursuant to an appeal filed in the clerk's office of the District Court of the United States for the Northern District of

New York, and to show cause, if any there be, why the judgment and order rendered against the defendants above named should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Given under my hand in the city of New York, in the district and circuit above named, this 24th day of March, in the year of our Lord one thousand nine hundred and ten, and of the Independence of the United States one hundred and thirty-third.

ALFRED C. COXE,
United States Circuit Judge.

103 (Indorsed:) United States Circuit Court of Appeals, Second Circuit. In the matter of the application of Wong You, Wong Chun, Hom Chee, Wong Yip, and Ju Fong for a writ of habeas corpus. Citation. U. S. District Court, N. D. of N. Y. B. W. Berry, attorney for defendants, Malone, N. Y. Filed Mar. 25, 1910, 9.36 a. m. W. S. Doolittle, clerk.

UNITED STATES OF AMERICA,
Northern District of New York,
District Court Clerk's Office, ss:

I, William S. Doolittle, clerk of the District Court of the United States for the Northern District of New York, do hereby certify that the foregoing pages, numbered from one to ninety-eight, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the matter of the application of Wong You, Wong Chun, Hom Chee, Wong Yip, and Ju Fong for a writ of habeas corpus as the same remain on file in my said office.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of Utica, in said district, on the 11th day of April, A. D. 1910.

[SEAL.] WILLIAM S. DOOLITTLE, *Clerk.*

104 United States Circuit Court of Appeals for the Second Circuit.

No. 328. October term, 1909.

Argued May 18, 1910. Decided June 14, 1910.

WONG YOU ET AL., APPELLANTS,
vs.
THE UNITED STATES, APPELLEE.

Appeal from the District Court of the United States for the Northern District of New York.

Before Lacombe, Coxe, and Noyes, circuit judges.

Appeal from orders of the District Court, Northern District of New York, dismissing writs of habeas corpus and remanding the petitioners Wong You, Wong Chun, Hom Chee, Wong Yip, and Ju Fong.

The petitioners are Chinese persons who in October and November, 1909, were taken into custody under warrants issued by the Department of Commerce and Labor charging them with being aliens unlawfully in the United States in that they entered in violation of the provisions of the immigration act of February 20, 1907.

The petitioners were given hearings before the Chinese and immigrant inspector at Malone, New York, and that official reported that they were alien subjects of China who had entered
105 the United States surreptitiously, without examination under the immigration laws, at places not designated as ports of entry under such laws, and that they were in the United States in violation of law.

Upon the report of the inspector the Acting Secretary of Commerce and Labor after finding that all the petitioners, with the exception of the petitioner Hom Chee, were in the United States in violation of said immigration act in that they entered without inspection and that three years after their entering had not elapsed, ordered their deportation to China and issued warrants of deportation. The Secretary of Commerce and Labor has not yet determined the status of the petitioner Hom Chee and he is still held under the departmental warrant of arrest. The other petitioners are held under the warrants of deportation.

It appeared with sufficient clearness at the hearing before the inspector that the petitioners were laborers. Four of them were laundrymen and the fifth had previously been excluded from admission to this country.

The especially relevant provisions of the statutes relating to the admission and exclusion of Chinese and of the immigration act of 1907 are printed in the footnote.[1]

106 NOYES, Circuit Judge (after making the foregoing statement):

Generalia specialibus non derogant is an elementary rule governing the interpretation of statutes. A later general statute which in its most comprehensive sense would include that which is

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[1] The Chinese exclusion law (act of 1882 as extended by acts of 1902 and 1904) provides that:

"* * * It shall not be lawful for any Chinese laborer to come from any foreign port or place, or having so come to remain in the United States."

Section 12 of said act as amended in 1884 provides:

"That no Chinese person shall be permitted to enter the United States by land without producing to the proper Chinese inspector the certificate in this act required of Chinese persons seeking to land from a vessel.

"And any Chinese person found unlawfully within the United States shall be caused to be removed therefrom to the country from whence he came, and at the cost of the United States, after being brought before some justice, judge, or commissioner of a court of the United States and found to be one not lawfully entitled to be or to remain in the United States." * * *

Section 7 of the Chinese act of 1888 provides:

"And no Chinese laborer shall be permitted to re-enter the United States without producing to the proper officer in charge at the port of such entry the return certificate herein required. A Chinese laborer possessing a certificate under this section shall be admitted to the United States only at the port from which he departed therefrom, and no Chinese person, except Chinese diplomatic or consular officers, and their attendants, shall be permitted to enter the United States except at the ports of San Francisco, Portland, Oregon, Boston, New York, New Orleans, Port Townsend, or such other ports as may be designated by the Secretary of Commerce and Labor."

Section 13 of said act of 1888 provides:

"That any Chinese person, or person of Chinese descent, found unlawfully in the United States, or its territories, may be arrested upon a warrant issued upon a com-

embraced in an earlier particular enactment, does not, as a general rule, repeal the latter but applies only to such cases within its general language as are not within the provisions of the particular act. "The general statute is read as silently excluding from its operation the cases which have been provided for by the special one." (Endlich on the Interpretation of Statutes, sec. 223.)

The application of this rule of interpretation is decisive of the present case. The Chinese exclusion acts deal with the removal of Chinese laborers unlawfully in this country and prescribe the procedure to be followed in deporting them. These statutes constitute comprehensive particular legislation with respect to that subject. It follows, then, under the rule of interpretation, that the immigration act—the later general statute—although in its terms including all aliens, applies only to those Chinese aliens who are not subject to removal by the particular Chinese enactments. And this is a case especially for the application of the rule because the immigration act expressly provides that it shall not be construed as repealing, altering, or amending the existing laws relating to the exclusion of Chinese persons.

107 It appears from the meagre record that these petitioners are Chinese laborers and—if the Government's contentions be well founded—that they are aliens and subject to deportation in accordance with the provisions of the statutes relating to the Chinese. As we understand it, the Government contends that the petitioners may be deported under either the Chinese act or the immigration act, not that the former is inapplicable.

If this contention of the Government be well founded, we have two statutes in force prescribing different methods of procedure for the deportation of alien Chinese laborers. And the immigration act—if the Government choose to act under it—would supersede the Chinese statute, because it is evident that no alien Chinese laborer could come into this country unless he entered surreptitiously and without inspection. But any such interpretation of the statutes would conflict

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plaint, under oath, filed by any party on behalf of the United States, by any justice, judge, or commissioner of any United States court returnable before any justice, judge, or commissioner of a United States court or before any United States court, and when convicted, upon a hearing, and found and adjudged to be one not lawfully entitled to be or remain in the United States, such person shall be removed from the United States to the country whence he came."

Section 20 of the immigration act of 1907 provides:

"That any alien who shall enter the United States in violation of law, and such as become public charges from causes existing prior to landing, shall, upon the warrant of the Secretary of Commerce and Labor, be taken into custody and deported to the country whence he came at any time within three years after the date of his entry into the United States."

Section 21 of the act provides:

"That in case the Secretary of Commerce and Labor shall be satisfied that an alien has been found in the United States in violation of this act, or that an alien is subject to deportation under the provisions of this act or of any laws of the United States, he shall cause such alien within the period of three years after landing or entry therein to be taken into custody and returned to the country whence he came, as provided by section twenty of this act, and a failure or refusal on the part of the masters, agents, owners, or consignees of vessels to comply with the order of the Secretary of Commerce and Labor to take on board, guard safely, and return to the country whence he came any alien ordered to be deported under the provisions of this act shall be punished by the imposition of the penalties prescribed in section nineteen of this act."

Section 43 of said act is in part as follows:

"That this act shall not be construed to repeal, alter, or amend existing laws relating to the immigration or exclusion of Chinese persons or persons of Chinese descent."

with the rule which we have considered under which both statutes do not apply to the same thing, but the later applies to those cases within its general language not within the provisions of the earlier; that is, as already pointed out, the Chinese statutes prescribe the procedure to be followed in removing alien Chinese laborers, while the immigration act states the procedure for the deportation of all other aliens unlawfully in this country, including Chinese other than laborers. We think that these petitioners being subject to removal according to the provisions of the Chinese exclusion laws are not subject to removal in accordance with the procedure of the immigration act.

This conclusion makes no distinction in favor of the Chinese. Chinese laborers are excluded by the Chinese act. All other Chinese persons, not being excluded by that act, are subject to the provisions of the immigration act. A Chinese laborer, with or without a loathsome disease, can not enter at all. The Chinese act governs the case. A Chinese merchant would not be excluded by that act, but would be excluded by the immigration act if he had a loathsome disease or other disability prescribed in such enactment.

We fully approve the decision in Ex parte Lee Sher Wing, 164 Fed., 506, that the provisions of the immigration act excluding alien immigrants afflicted with certain diseases, etc., are applicable to
108 Chinese immigrants otherwise entitled to admission. The distinction upon which the application of that act depends lies in the difference in Chinese persons—between those who are and those who are not subject to the Chinese exclusion laws—and we find no case in which the conclusions—as distinguished, perhaps, from general references to Chinese persons in the opinions—are inconsistent with this distinction.

For these reasons, we hold that as these petitioners appear to be subject to deportation in accordance with the enactments particularly relating to Chinese, they are not subject to removal under the provisions of the immigration act and consequently are unlawfully held by process—either of arrest or deportation—issued under such act. If, however, proceedings should be instituted under the Chinese statutes and it should be made to appear that the petitioners are not subject to deportation thereunder, this opinion and the discharge of the petitioners in the present proceeding will not prejudice the institution of another proceeding under the immigration act.

The orders of the District Court are reversed and the causes remanded with instructions to enter orders in due form discharging the petitioners from custody.

R. M. Moore for appellants.

H. E. Owen, assistant United States attorney, for appellee.

109 At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the court rooms in the post office building in the city of New York, on the 24th day of June, one thousand nine hundred and ten.

Present: Hon. E. Henry Lacombe, Hon. Alfred Coxe, Hon. Walter C. Noyes, circuit judges.

WONG YOU ET AL., APPELLANTS,
vs.
THE UNITED STATES, APPELLEE.

Appeal from the District Court of the United States for the Northern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Northern District of New York, and was argued by counsel.

On consideration whereof it is now hereby ordered, adjudged, and decreed that the order of said district court be, and it hereby is, reversed and cause remanded with instructions to enter orders in due form discharging the petitioners from custody.

E. H. L. It is further ordered that a mandate issue to the said District Court in accordance with this decree.

110 (Endorsed:) United States Circuit Court of Appeals, Second Circuit. Wong You et al. vs. U. S. Order for mandate. United States Circuit Court of Appeals, Second Circuit. Filed June 24, 1910. William Parkin, clerk.

111 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 110, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Wong You et al. against United States, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this 8th day of May, in the year of our Lord one thousand nine hundred and eleven, and of the Independence of the said United States the one hundred and thirty-fifth.

[SEAL.] WM. PARKIN, *Clerk.*

112 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States Circuit Court of Appeals for the Second Circuit, greeting:

Being informed that there is now pending before you a suit in which Wong You et al. are appellants, and the United States is appellee, which suit was removed into the said Circuit Court of

Appeals by virtue of an appeal from the District Court of the United States for the Northern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States,
113 do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 10th day of June, in the year of our Lord one thousand nine hundred and eleven.

[SEAL.] JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

(Indorsed:) File No. 22672. Supreme Court of the United States. No. 1051, October term, 1910. United States vs. Wong You et al. Writ of certiorari. United States Circuit Court of Appeals, Second Circuit. Filed June 27, 1911. William Parkin, clerk.

115 In the Supreme Court of the United States. October term, 1911.

THE UNITED STATES
v.
WONG YOU ET AL. } No. 597.

Stipulation as to return to writ of certiorari.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified copy of the transcript of the record now on file in the Supreme Court of the United States shall be taken as the return of the clerk of the Circuit Court of Appeals for the Second Circuit to the writ of certiorari issued herein.

F. W. LEHMANN,
Solicitor General.
B. W. BERRY,
Counsel for Respondents.

June 23, 1911.

(Indorsed:) U. S. vs. Wong You. Stipulation. United States Circuit Court of Appeals, Second Circuit. Filed June 27, 1911. William Parkin, clerk.

116 *To the honorable the Supreme Court of the United States, greeting:*

The record and all proceedings whereof mention is within made having lately been certified and filed in the office of the clerk of the Supreme Court of the United States, a copy of the stipulation of

counsel is hereunto annexed and certified as a return to the writ of certiorari issued herein.

New York, June 27, 1911.

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

(Indorsed:) 597. 22672. Office of the clerk, Supreme Court U. S. Received Jul' 7, 1911.

(Indorsement on cover:) File No. 22672. Supreme Court U. S. October term, 1911. Term No. 597. The United States, petitioner, *vs.* Wong You et al. Writ of certiorari and return. Filed July 7, 1911.

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In the Supreme Court of the United States.

OCTOBER TERM, 1911.

THE UNITED STATES, PETITIONER, *v.* WONG YOU, WONG CHEEN, et al.	No. 597.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

MOTION TO ADVANCE.

Comes now the Solicitor General and moves the court to advance this case and assign it for hearing at an early date during the present term.

This case is before the court on a writ of certiorari granted at the last term. The question involved is whether the Secretary of Commerce and Labor may deport, under the immigration laws, Chinese aliens who surreptitiously enter the United States at other than a designated port of entry, or whether the right of such aliens to remain in the United States must first be determined judicially under the Chinese-exclusion laws.

The facts, briefly stated, are that, upon a full and fair hearing as to each of the Chinamen, the

Chinese and immigrant inspector found and decided that they were Chinese subjects; that they entered the United States surreptitiously and without examination at places not designated as ports of entry, and that, therefore, they were in this country in violation of the immigration act. (R., 3–5, 16, 21, 25, 32, 34.) The Acting Secretary of Commerce and Labor approved the findings and issued warrants of deportation (R., 5) under the provisions of sections 20, 21, and 36 of the immigration act of February 20, 1907 (34 Stat., 898), which sections expressly authorize the deportation of any aliens entering the United States at other than the designated ports of entry.

Application was then made on behalf of the Chinamen to the District Court for the Northern District of New York for a writ of habeas corpus, it being alleged that they were born in the United States and are citizens thereof, and that they were unlawfully detained. (R., 1, 2.) The writ was issued, but was dismissed as to Hoen Chee, his case not having been passed upon by the Secretary of Commerce and Labor (R., 49, 58.) As to the others, the district court held that the immigration act was applicable to Chinese as well as to other aliens, and that, having entered this country in violation of its provisions, they might properly be deported on the warrants of the Secretary of Commerce and Labor. (176 Fed., 933.) The writ was accordingly dismissed and petitioners remanded to

the custody of the immigration officials. (R., 49–59.)

The Circuit Court of Appeals reversed the judgment of the District Court and ordered the Chinese discharged from custody. (R., 61–65.) The ground of its decision was that the record indicated that petitioners were laborers and apparently subject to deportation under the Chinese-exclusion laws, and that, therefore, they could not be deported under the immigration laws, unless proceedings to deport them under the Chinese-exclusion laws should be unsuccessful. (181 Fed., 313.)

The effect of this decision of the Circuit Court of Appeals is to provide an opportunity for the surreptitious entry of Chinese into the United States, and a number of cases have arisen in various parts of the country in which the question involved in this case is presented for determination.

Being thus embarrassed in the enforcement of both the immigration and Chinese-exclusion laws by this decision of the Circuit Court of Appeals, the Government deems it important that the question should be authoritatively decided at an early date.

This motion to advance is therefore respectfully submitted.

FREDERICK W. LEHMANN,
Solicitor General.

WILLIAM R. HARR,
Assistant Attorney General.

NOVEMBER, 1911.

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In the Supreme Court of the United States.

OCTOBER TERM, 1910.

THE UNITED STATES, PETITIONER, *v.* WONG YOU, WONG CHEEN (WONG CHUN), Hoen Chee (Hon Chee), Wong Mow Sue (Wong Yip), and Ju Fong.	No. ——.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF THEREON.

Comes now the Solicitor General, on behalf of petitioner, and respectfully prays that a writ of certiorari be issued to review the judgment of the Circuit Court of Appeals in this case; and in support of this petition says:

QUESTION PRESENTED.

The question presented is whether the Secretary of Commerce and Labor may deport Chinese aliens, under the immigration laws, who surreptitiously enter the United States at other than a designated port of entry, or whether the right of such aliens to remain in the United States must first be determined judicially under the Chinese-exclusion laws. The

District Court upheld the authority of the Secretary in this respect, but the Circuit Court of Appeals reversed its judgment.

The effect of this decision is to put a premium upon the surreptitious entry of Chinese into the United States, and practically operates to defeat both laws.

STATEMENT OF CASE.

The respondents, Wong You, Wong Cheen, and Hoen Chee, were brought by two white men in an automobile from Montreal, Province of Quebec, to Owls Head, N. Y., about 15 miles from the Canadian boundary (R., 19–21, 31, 37, 38), where they took a train, upon which they were later arrested at Utica, N. Y. (R., 13, 27–28, 34). They were to pay $150 to $170 each for being brought into this country (R., 20, 31, 38).

Wong Mow Sue and Ju Fong likewise came from Canada, and were taken into custody while on a canal boat at Rouses Point, N. Y. (R., 41, 42, 48, 49, 52).

After a full and fair hearing in each case (R., 13–54) the Chinese and immigrant inspector found that respondents were Chinese subjects; that they entered the United States surreptitiously and without examination at places not designated as ports of entry, and that, therefore, they were in this country in violation of the immigration act (R., 26, 33, 40, 51, 55).

The Acting Secretary of Commerce and Labor approved the findings of the inspector and issued warrants of deportation (R., 8) under the provisions of sections 20, 21, and 36 of the immigration

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act, which expressly authorize the deportation of any aliens entering the United States at other than the designated ports of entry.

Application was then made on behalf of the Chinamen to the District Court for the Northern District of New York for a writ of habeas corpus, it being alleged that their detention was unlawful simply because they were born in the United States and were citizens thereof. (R., 1.) The writ was issued, but was dismissed as to Hoen Chee because his case had not been passed upon by the Secretary of Commerce and Labor. (R., 79.) As to the others, the District Court held that the immigration act was applicable to Chinese as well as other aliens, and that, having entered this country in violation of its provisions, they might properly be deported on the warrants of the Secretary of Commerce and Labor. (176 Fed., 933.) The writ was accordingly dismissed and petitioners remanded to the custody of the immigration officials. (R., 79–98.)

The Circuit Court of Appeals reversed the judgment of the District Court and ordered the Chinamen released from custody. The ground of its decision was that, as the record indicated that petitioners were laborers and apparently subject to deportation under the Chinese-exclusion laws, they could not be deported under the immigration laws unless proceedings to deport them under the Chinese-exclusion laws should be unsuccessful. (181 Fed., 313.)

The statutes and regulations bearing on the question involved are set out in the appendix hereto.

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ARGUMENT.

I.

The Circuit Court of Appeals held that the immigration act—

> although in its terms including all aliens, applies only to the Chinese aliens who are not subject to removal by the particular Chinese enactments.

That court also said—

> It appears from the meager record that these petitioners are Chinese laborers and—if the Government's contentions be well founded—that they are aliens and subject to deportation in accordance with the provisions of the statutes relating to the Chinese.

The "meager record" from which the Circuit Court of Appeals said it appeared that the petitioners were Chinese laborers consisted of the petition for the writ of habeas corpus, the return of the immigration officer to the writ, and the proceedings before the Deparment of Commerce and Labor leading up to the orders of deportation, a copy of which was attached to and made a part of the return. The return (R., 4) and proceedings before the Department (R., 13 et seq.) merely show that the petitioners were found to be aliens and to have surreptitiously entered the United States at other than a designated port of entry, and that they were ordered deported

for these reasons alone. The inquiry at the hearing accorded petitioners by the Department (R., 13 et seq.) was directed solely to determining these facts. The question whether they were laborers or not was not raised or considered by the Department, nor was it raised on the petition for the writ of habeas corpus or considered by the District Court. Anything in the record indicating that petitioners were laborers and possibly subject to deportation under the Chinese exclusion laws was brought out incidentally in the course of the hearing given them by the department, which, as stated, was devoted exclusively to the determination of whether they were aliens who had surreptitiously entered the United States.

That this is a correct statement of the facts of this case further appears from the opinion of the District Court. (R., 79 et seq.) The conclusion of the Circuit Court of Appeals, therefore, that—

> If this contention of the Government be well founded, we have two statutes in force prescribing different methods of procedure for the deportation of alien Chinese laborers—

is clearly erroneous. Petitioners were not and could not have been arrested within the country and ordered deported by the Secretary of Commerce and Labor under the immigration laws simply because they were Chinese laborers. Chinese *laborers*, unlawfully within the United States, can only be arrested and deported *as such* under the exclusion laws. There is therefore no occasion for the application of

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the rule *generalia specialibus non derogant*, relied on by the Circuit Court of Appeals.

But while holding that petitioners were unlawfully held under the immigration laws, the Circuit Court of Appeals said that—

> If, however, proceedings should be instituted under the Chinese statutes and it should be made to appear that the petitioners are not subject to deportation thereunder, this opinion and the discharge of the petitioners in the present proceeding will not prejudice the institution of another proceeding under the immigration act.

The substance of the judgment of the Circuit Court of Appeals is, therefore, that whenever a Chinese alien is found to have entered or to be within the United States in violation of the immigration laws, and there is some ground to believe that he is a Chinese laborer and therefore subject to deportation under the Chinese-exclusion laws, the Government must first settle that question through the judicial proceedings provided for by those laws before it can undertake to deport him under the immigration laws. In other words, although the Chinese alien may be subject to deportation under both laws, the Government is compelled to proceed first under the Chinese-exclusion laws in the case of Chinamen who are apparently laborers.

It is to be observed that the ruling of the Circuit Court of Appeals applies to Chinese aliens afflicted with loathsome diseases or otherwise disqualified

from admission under the immigration laws. Thus, the court said:

> This conclusion makes no distinction in favor of the Chinese. Chinese laborers are excluded by the Chinese act. All other Chinese persons not being excluded by that act are subject to the provision of the immigration act. A Chinese laborer, with or without a loathsome disease, can not enter at all. The Chinese act governs the case. A Chinese merchant would not be excluded by that act, but would be excluded by the immigration act if he had a loathsome disease or other disability prescribed in such enactment—

The statement of the Circuit Court of Appeals that—

> a Chinese laborer, with or without a loathsome disease, can not enter at all.

is no answer to the Government's position. It is true he can not enter *legally*, but he can and does enter *surreptitiously*, and the point is that, under the ruling of the Circuit Court of Appeals, when he does so enter, he must be allowed to remain, although afflicted with a loathsome disease and ultimately subject to deportation under the immigration laws, until the question whether he is a laborer or not is judicially determined. Not until it is judicially determined that he is not within the Chinese-exclusion laws can he be deported under the immigration laws. The error of such a construction is manifest. If subject to deportation under either law, it is immaterial, legally, under which such proceedings are first instituted.

II.

The application of the immigration laws to Chinese aliens is well settled. (*Ex parte Lee Sher Wing*, 164 Fed., 506; *Looe Shee* v. *North*, 170 Fed., 566; *Ex parte Li Dick*, 174 Fed., 674, 176 Fed., 998; *Haw Moy* v. *North*, 183 Fed., 89; *Hoo Choy* v. *North*, 183 Fed., 92; 24 Op. A. G., 706.)

Ex parte Li Dick (supra) was also a case of the surreptitious entry of a Chinese alien, who was ordered deported by the Secretary of Commerce and Labor. Referring to the provision of the immigration act that—

> this act shall not be construed to repeal, alter, or amend existing laws relating to the immigration or exclusion of Chinese persons or persons of Chinese descent. * * *

District Judge Ray, who also decided the present case in the District Court, said (176 Fed., 1002):

> This is not a declaration that the act and all or any of its provisions are inapplicable to Chinese aliens. If they enter, they must enter at the designated ports of entry. If they enter, they must submit to the examination and inspection provided for all aliens. A Chinese anarchist, or a Chinese afflicted with one of the loathsome or infectious diseases mentioned in the act, is no more entitled to admission than is an Italian or Japanese alien. If a Chinese alien sees fit to enter surreptitiously and in violation of law, he is then illegally in the United States, and Congress has confided to the Department of Commerce

and Labor the power and duty of ascertaining the fact and, if shown, of deporting the offender. In *Looe She* v. *North* (170 Fed., 572; 95 C. C. A., 646; and 24 Op. Atty. Gen., 706) this power, as to Chinese aliens, is upheld. This court considered the question in *Ex parte Li Dick* (D. C.) 174 Fed., 674, and on this point, after a full examination and further consideration, adheres to the proposition that a Chinese alien who surreptitiously enters the United States in violation of the immigration act may be deported under the provisions of that act, *and that such an entry so gained does not entitle him to a hearing before a United States judge or commissioner.* I do not think the law is in such shape that a Chinese alien who surreptitiously enters, and thereby violates and evades compliance with the immigration law, thereby also evades the Department of Commerce and Labor and its jurisdiction to deal with him under the provisions of that act and becomes entitled to a trial and examination before a justice, judge, or a commissioner, under the provisions of the Chinese-exclusion laws. The two acts can stand and be enforced together. Two remedies may be provided for the same illegal act, and either, or, in some cases, both, enforced. If Congress had intended to exclude Chinese aliens from the operation of the immigration laws, it would have done so by apt words. It would have been easy to do so. We find no word or expression indicating such a purpose.

The immigration act of March 3, 1893 (27 Stat., 569, 571), provided:

> That this act *shall not apply* to Chinese persons.

In the act of 1903 (32 Stat., 1213, 1221), section 36, and the act of 1907 (34 Stat., 898, 911) this clause was changed to read:

> That this act shall not be construed *to repeal, alter, or amend* existing laws relating to the immigration or exclusion of Chinese persons or persons of Chinese descent.

This change indicates the intent of Congress that the immigration act should apply to Chinese aliens, although not affecting the operation of the exclusion laws, and such has been the practical and judicial construction of this legislation, as appears from the cases above cited.

The Circuit Court of Appeals in this case recognizes the application of the immigration laws to certain Chinese aliens, but holds that they do not apply to Chinese aliens who are laborers or otherwise excluded by the Chinese-exclusion laws. The Government, however, is not contending for the right of the Secretary of Commerce and Labor, under the immigration laws, to deport alien Chinese laborers as such, but simply that alien Chinese who have entered the United States in violation of the immigration, as well as possibly the Chinese-exclusion laws, may be deported under the former, if the Government shall so elect, without the necessity of first having it judicially determined whether the exclusion laws are also applicable to them.

III.

The decision of the Circuit Court of Appeals puts a premium upon the surreptitious entry of Chinese.

Before a Chinese alien can lawfully enter the United States he must undergo examination under both the Chinese-exclusion and the immigration laws at the proper port of entry. This is expressly so provided in rule 3 of the Secretary of Commerce and Labor governing the admission of Chinese, which is above set forth (page 8); that rule, for administrative reasons, requiring that Chinese aliens shall *first* be examined under the immigration laws and regulations.

If, therefore, a Chinese alien seeks to enter the United States at a designated port of entry and is found disqualified under the immigration laws because afflicted with a loathsome disease or for other causes, he could and would be immediately deported by order of the Secretary of Commerce and Labor without inquiring whether he is also subject to deportation under the Chinese-exclusion laws. Under such circumstances the latter inquiry becomes unnecessary. According to the ruling of the Circuit Court of Appeals in this case, however, if a Chinese alien surreptitiously enters the United States at other than a designated port of entry, the Secretary of Commerce and Labor is powerless to deport him under the immigration laws until it has been judicially determined that he is not within the Chinese-exclusion laws. A premium is therefore put upon the surreptitious entry of Chinese.

The question presented in this case is one of considerable importance in the administration of both the Chinese-exclusion and the immigration laws. It has been for years past the practice of Chinese aliens to enter the United States surreptitiously from Canada and Mexico. Judicial proceedings for their deportation under the Chinese-exclusion laws are attended with delay and for various reasons are frequently futile. Manifestly, Chinese persons surreptitiously entering the United States at other than designated ports of entry are entitled to no special consideration, especially as the purpose of such surreptitious entry is simply to evade the operation of both the Chinese-exclusion and the immigration laws.

It is respectfully submitted, therefore, that the decision of the Circuit Court of Appeals is erroneous, and that a writ of certiorari should issue as prayed.

FREDERICK W. LEHMANN,
Solicitor General.

WILLIAM R. HARR,
Assistant Attorney General.

APRIL, 1911.

APPENDIX.

STATUTES.

The provisions of the immigration act of February 20, 1907 (34 Stat., 898), in pursuance of which the warrants of deportation were issued, are as follows:

> SEC. 36. That all aliens who shall enter the United States except at the seaports thereof, or at such place or places as the Secretary of Commerce and Labor may from time to time designate, shall be adjudged to have entered the country unlawfully and shall be deported as provided by sections twenty and twenty-one of this act. * * *
>
> SEC. 20. That any alien who shall enter the United States in violation of law, and such as become public charges from causes existing prior to landing, shall, upon the warrant of the Secretary of Commerce and Labor, be taken into custody and deported to the country whence he came at any time within three years after the date of his entry into the United States. * * *
>
> SEC. 21. That in case the Secretary of Commerce and Labor shall be satisfied that an alien has been found in the United States in violation of this act, or that an alien is subject to deportation under the provisions of

> this act or of any law of the United States, he shall cause such alien within the period of three years after landing or entry therein to be taken into custody and returned to the country whence he came, as provided by section twenty of this act. * * *
>
> SEC. 43. * * * All acts and parts of acts inconsistent with this act are hereby repealed: *Provided,* That this act shall not be construed to repeal, alter, or amend existing laws relating to the immigration or exclusion of Chinese persons or persons of Chinese descent. * * *

The Chinese-exclusion act of May 6, 1882 (22 Stat., 58), as amended by section 1 of the act of July 5, 1884 (23 Stat., 115), and continued in force by the acts of April 29, 1902 (32 Stat., 176), and April 27, 1904 (33 Stat., 394, 428), provides that:

> * * * It shall not be lawful for any Chinese laborer to come from any foreign port or place, or having so come to remain within the United States.

Section 12 of the act of May 6, 1882 (22 Stat., 58), as amended by the act of July 5, 1884 (23 Stat., 115), provides:

> That no Chinese person shall be permitted to enter the United States by land without producing to the proper customs officer [Chinese inspector] the certificate in this act required of Chinese persons seeking to land from a vessel.
>
> And any Chinese person found unlawfully within the United States shall be caused to be

> removed therefrom to the country from whence he came, and at the cost of the United States, after being brought before some justice, judge, or commissioner of a court of the United States and found to be one not lawfully entitled to be or to remain in the United States. * * *

Section 7 of the act of September 13, 1888 (25 Stat., 477), reenacted by the acts of April 29, 1902 (32 Stat., 176), and April 27, 1904 (33 Stat., 394, 428), provides:

> * * * And no Chinese laborer shall be permitted to reenter the United States without producing to the proper officer of the customs [proper officer in charge] at the port of such entry the return certificate herein required. A Chinese laborer possessing a certificate under this section shall be admitted to the United States only at the port from which he departed therefrom, and no Chinese person, except Chinese diplomatic or consular officers, and their attendants, shall be permitted to enter the United States except at the ports of San Francisco, Portland, Oregon, Boston, New York, New Orleans, Port Townsend, or such other ports as may be designated by the Secretary of the Treasury [Commerce and Labor].

Section 13 of said act of 1888, likewise reenacted by the above-mentioned acts of 1902 and 1904, provides:

> That any Chinese person, or person of Chinese descent, found unlawfully in the United States, or its Territories, may be arrested upon a warrant issued upon a complaint, under oath, filed by any party on

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behalf of the United States, by any justice, judge, or commissioner of any United States court, returnable before any justice, judge, or commissioner of a United States court or before any United States court, and when convicted, upon a hearing, and found and adjudged to be one not lawfully entitled to be or remain in the United States, such person shall be removed from the United States to the country whence he came. * * *

RULES AND REGULATIONS.

Under the provisions of the immigration act, the following rule has been issued by the Department of Commerce and Labor:

RULE 24. *Ports of entry, Canada.*—In accordance with section 36, the following are named as Canadian border ports of entry for aliens; and any alien who enters the United States across such border at any other point shall be deemed to have entered the country unlawfully, and shall be arrested and deported under sections 20, 21, and 35 of said act, in the manner provided by rule 34 hereof: Eastport, Calais, Vanceboro, Fort Kent, Fort Fairfield, Van Buren, Houlton, and Lowelltown, Me.; Beechers Falls, N. H.; Island Pond, Newport, Richford, St. Albans, Swanton, and Alburg, Vt.; Rouses Point, Malone, Fort Covington, Nyando, Ogdensburg, Morristown, Clayton, Cape Vincent, Charlotte, Lewiston, Niagara Falls, and Buffalo, N. Y.; Detroit, St. Clair, Port Huron, and Sault Ste. Marie, Mich.; Duluth, Ranier, International Falls, Warroad, Beaudette, and Noyes, Minn.; Pembina, Neche,

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Walhalla, Portal, and St. John, N. Dak.; Sweet Grass and Gateway, Mont.; Porthill and Eastport, Idaho; Marcus, Oroville, Sumas, and Blaine, Wash.

The following rules have been issued by that department governing the admission of Chinese:

RULE 1. No Chinese person, other than a Chinese diplomatic or consular officer and attendants, shall be permitted to enter the United States elsewhere than at the ports of San Francisco, Cal.; Portland, Oreg.; Boston, Mass.; New York, N. Y.; New Orleans, La.; Port Townsend and Seattle, Wash.; Honolulu, Hawaii; San Juan and Ponce, P. R.; San Diego, Cal.; and Tampa, Fla.

RULE 3. Chinese aliens shall be examined as to their right to admission to the United States under the provisions of the law regulating immigration as well as under the laws relating to the exclusion of Chinese. As the immigration act relates to aliens in general, the status of Chinese applying for admission must *first* be determined in accordance with the terms of that law and of the regulations drawn in pursuance thereof; then, if found admissible under such law and regulations, their status under the Chinese-exculsion laws and regulations shall be determined. In order to avoid inconvenience, delay, or annoyance to Chinese applicants arising through misunderstanding, and in the interest of good administration, examination under both sets of laws and regulations shall be made, in the order stated, only at the ports named in rule 1 hereof.

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In the Supreme Court of the United States.

OCTOBER TERM, 1911.

THE UNITED STATES, PETITIONER,
v.
WONG YOU, WONG CHEEN ET AL, } No. 597.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

These Chinamen, by their attorney, applied to the United States District Court for the Northern District of New York for a writ of habeas corpus, alleging that they were Chinese persons born in the United States and citizens thereof, and were unlawfully restrained of their liberty and detained by Silas W. Horton, Chinese inspector of the United States, at Malone, New York. (R., 1.)

The writ issued (R. 2), and Horton made a return, in which he alleged, in substance, that these Chinamen had surreptitiously entered the United States from the Dominion of Canada, some on October 22

and the others on November 28, 1909, at certain points in the Northern District of New York, without having produced the certificate of admission or having been examined or inspected as required by the immigration laws and regulations; that they entered at a point not designated as a port of entry under the immigration laws and regulations; that a day or two after their respective entries they were arrested by warrant of the Secretary of Commerce and Labor and taken before the officers named therein; that they were given full opportunity to show cause why they should not be deported, and were advised of their right to be represented by counsel and to inspect all the evidence upon which the Secretary of Commerce and Labor had acted in directing their arrest; that the Chinese inspector and inspector of immigration who conducted such inquiry and examination, after due consideration, found that said Chinamen were aliens and had entered the United States without inspection or examination under the immigration laws, the place of entry not being designated as a port of entry under the immigration laws, and that they were in the United States in violation of law; that the record of the proceedings before the immigration officer was forwarded to the Secretary of Commerce and Labor, said Chinamen being given opportunity to inspect the same and make a copy thereof, and that the Acting Secretary of Commerce and Labor, upon a consideration of such record, found that they were aliens and had entered the United States in viola-

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tion of section 36 of the act of February 20, 1907, and rule 24 of the immigration regulations without being inspected under any of the various provisions of the said act; that the period of three years after such landing had not elapsed, and that the Acting Secretary of Commerce and Labor had issued warrants of deportation in their cases, by virtue of which the respondent held them (R. 3–6).

Accompanying the return were the warrants of arrest and the testimony and proceedings had and taken under them (R., 4, 6 et seq.).

The testimony before the Chinese and immigration inspector fully supports his finding and that of the Acting Secretary of Commerce and Labor that said Chinamen were aliens and had surreptitiously entered the United States. It shows that the respondents Wong You, Wong Cheen (Wong Chung), and Hoen or Hom Chee, were brought by two white men in an automobile from Montreal, Province of Quebec, to some town on this side of the Canadian boundary (R., 11–12, 19, 22, 23), where they took a train, upon which they were later arrested at Utica, N. Y. (R., 8, 16–17, 21). They were to pay $150 to $170 each for being brought into this country and put into some town, said by one to be Boston (R., 12, 19, 24). Such testimony also shows that Wong Mow Sue and Ju Fong likewise entered the United States from Canada and were taken into custody while on a canal boat at Rouses Point, N. Y. (R., 25, 26, 30, 31, 33.)

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The District Court dismissed the writ of habeas corpus as to Hoen or Hom Chee, because his case had not been passed upon by the Secretary of Commerce and Labor (R. 49).

The writ was also dismissed as to the other petitioners, and they were remanded to the custody of the immigration inspector in charge of the detention station at Malone, N. Y., to be dealt with according to law (R., 49–58).

Upon appeal, the Circuit Court of Appeals reversed the judgment of the District Court and ordered the Chinamen released from custody (R., 61–64). The case is now before this court on writ of certiorari granted at the last term.

ARGUMENT.

I.

There is no question as to the facts of this case, which show that these Chinamen are aliens and, a day or two previous to their arrest, surreptitiously entered the United States across the Canadian border at other than a designated port of entry under the immigration laws. Considering them simply as aliens, and subject like other aliens to the provisions of the immigration laws, and particularly to section 36 of the act of February 20, 1907, which authorizes the Secretary of Commerce and Labor to deport any alien who shall enter the United States except at the seaports thereof or such place or places as he may designate, they were arrested and ordered deported by the immigration authorities, after having first been accorded a full and fair hearing. Under these circumstances, if the immigration laws apply to them, the action of the Secretary can not be questioned by the courts. (*Chin Yow* v. *United States*, 208 U. S., 8, 13.)

The District Court (Judge Ray), in a carefully considered opinion, held (R. 49, 51):

> 1. These persons are aliens.
>
> 2. They entered the United States surreptitiously, not at a port of entry, and without inspection or examination. They

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entered in defiance and in violation of law. They came with the intention of remaining.

3. They placed themselves in the United States by violating our laws; by their own unlawful acts, and can not, therefore, be heard to say they are not here in violation of law, or unlawfully.

4. They came into the United States in violation of the immigration act or laws, and, being aliens, were and are subject to its provisions.

5. Chinese aliens are not exempt from the provisions of the immigration laws, rules, and regulations.

6. The two acts may be enforced together and are not inconsistent with each other. The immigration act does not repeal the Chinese exclusion laws or any part thereof.

The District Court also held that, as the record showed that these Chinamen had left China for the purpose of coming to the United States through Canada, China and not Canada was to be deemed the place from which they came within the meaning of the immigration act, and they were properly ordered to be deported to China by the Secretary of Commerce and Labor. This latter question was not considered by the Circuit Court of Appeals in its opinion, and we do not think it necessary to add anything to the well-reasoned opinion of the District Court upon this point.

The Circuit Court of Appeals held that the immigration act, " although in its terms including all aliens, applies only to those Chinese aliens who are

not subject to removal by the particular Chinese enactments" (R., 63); that "it appears from the meager record that these petitioners are Chinese laborers and—if the Government's contentions be well founded—that they are aliens and subject to deportation in accordance with the provisions of the statutes relating to the Chinese" (ib.), and that, "if this contention of the Government be well founded, we have two statutes in force prescribing different methods of procedure for the deportation of alien Chinese laborers" (ib.).

It thus appears that the Circuit Court of Appeals proceeded upon the assumption that the Government was trying to deport these Chinamen under the immigration act as alien Chinese *laborers* unlawfully within the United States. This is wholly incorrect. The record shows that they were ordered deported simply because they were *aliens* who had entered the United States without inspection at other than designated ports of entry under the immigration laws. Anything in the record indicating that they were laborers, and possibly also subject to deportation under the Chinese exclusion laws, was only brought out incidentally in the course of the hearing given them by the inspector.

Petitioners were not and could not have been arrested within the country and ordered deported by the Secretary of Commerce and Labor under the immigration laws simply because they were Chinese laborers. Chinese *laborers*, unlawfully within the United States, can only be arrested and de-

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ported *as such* under the exclusion laws. There is therefore no occasion for the application of the rule *generalia specialibus non derogant,* relied on by the Circuit Court of Appeals.

The error of the appellate court's view becomes apparent in considering the case of Chinese laborers who are brought into the United States in violation of the alien contract labor provisions of the immigration laws. Manifestly, it would be no valid objection to the deportation under those laws of an alien contract laborer that he was a Chinaman and also subject to deportation under the Chinese-exclusion laws. It is for the Government to elect under which law it will proceed in such a case.

But while holding that petitioners were unlawfully held under the immigration laws, the Circuit Court of Appeals said (R., 64):

> If, however, proceedings should be instituted under the Chinese statutes and it should be made to appear that the petitioners are not subject to deportation thereunder, this opinion and the discharge of the petitioners in the present proceeding will not prejudice the institution of another proceeding under the immigration act.

The substance of the judgment of the Circuit Court of Appeals is, therefore, that whenever a Chinese alien is found to have entered or to be within the United States in violation of the immigration laws, and there is some ground to believe that

he is a Chinese laborer and therefore subject to deportation under the Chinese-exclusion laws, the Government must first settle that question through the judicial proceedings provided for by those laws before it can undertake to deport him under the immigration laws. In other words, although the Chinese alien may be subject to deportation under both laws, the Government is compelled to proceed first under the Chinese-exclusion laws in the case of Chinamen who are apparently laborers.

II.

The application of the immigration laws to Chinese aliens is well settled.

The immigration act of March 3, 1893 (27 Stat., 569,571), provided:

> That this act *shall not apply* to Chinese persons.

In the immigration act of March 3, 1903 (32 Stat., 1213, 1221), section 36, and in the act of February 20, 1907 (34 Stat., 898, 911), this clause was changed to read:

> That this act shall not be construed *to repeal, alter, or amend* existing laws relating to the immigration or exclusion of Chinese persons or persons of Chinese descent.

This change indicates the intent of Congress that the immigration act should apply to Chinese aliens, although not affecting the operation of the exclusion laws, and such has been the practical and judicial construction of this legislation.

In an opinion rendered June 24, 1903, Attorney General Knox, in holding that the immigration act of March 3, 1903, authorized the exclusion of a Chinese alien afflicted with a dangerous and contagious disease, said (24 Op., 706, 708):

> To admit a Chinaman known to be suffering from a contagious disease, when another alien not so descended would be excluded because afflicted with the same disease, would to that extent defeat the legislative intent made clear by the terms of the act and apparently lead to unjust and unexpected results. "Nothing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative intention and, if possible, so as to avoid an unjust and absurd conclusion." (*Lau Ow Bew* v. *U. S.*, 144 U. S., 47.)

This view has been uniformly followed by the executive department and the courts.

> *Ex parte Lee Sher Wing*, 164 Fed., 506.
> *Looe Shee* v. *North*, 170 Fed., 566.
> *Ex parte Li Dick*, 174 Fed., 674, 176 Fed., 998.
> *Haw Moy* v. *North*, 183 Fed., 89.

In *Ex parte Li Dick*, 176 Fed., 1002, which was also a case of the surreptitious entry of a Chinese alien who was sought to be deported for violation of the immigration laws, District Judge Ray, referring to the provision of the immigration act that that act "shall not be construed to repeal, alter, or amend existing laws relating to the immigration or

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exclusion of Chinese persons or persons of Chinese descent," said:

> This is not a declaration that the act and all or any of its provisions are inapplicable to Chinese aliens. If they enter, they must enter at the designated ports of entry. If they enter, they must submit to the examination and inspection provided for all aliens. A Chinese anarchist, or a Chinese afflicted with one of the loathsome or infectious diseases mentioned in the act, is no more entitled to admission than is an Italian or Japanese alien. If a Chinese alien sees fit to enter surreptitiously and in violation of law, he is then illegally in the United States, and Congress has confided to the Department of Commerce and Labor the power and duty of ascertaining the fact and, if shown, of deporting the offender. In *Looe She* v. *North* (170 Fed., 572; 95 C. C. A., 646; and 24 Op. Atty. Gen., 706) this power, as to Chinese aliens, is upheld. This court considered the question in *Ex parte Li Dick* (D. C.), 174 Fed., 674, and on this point, after a full examination and further consideration, adheres to the proposition that a Chinese alien who surreptitiously enters the United States in violation of the immigration act may be deported under the provisions of that act, *and that such an entry so gained does not entitle him to a hearing before a United States judge or commissioner.* I do not think the law is in such shape that a Chinese alien who surrepti-

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tiously enters, and thereby violates and evades compliance with the immigration law, thereby also evades the Department of Commerce and Labor and its jurisdiction to deal with him under the provisions of that act and becomes entitled to a trial and examination before a justice, judge, or a commissioner, under the provisions of the Chinese-exclusion laws. The two acts can stand and be enforced together. Two remedies may be provided for the same illegal act, and either, or, in some cases, both, enforced. If Congress had intended to exclude Chinese aliens from the operation of the immigration laws, it would have done so by apt words. It would have been easy to do so. We find no word or expression indicating such a purpose.

III.

The decision of the Circuit Court of Appeals operates to defeat some of the most salutary provisions of the immigration laws and to put a premium upon the surreptitious entry of Chinese.

One of the primary objects of the immigration laws is to exclude diseased persons. By section 2 of the act of February 20, 1907, "persons afflicted with tuberculosis or with a loathsome or dangerous contagious disease" are denied admission into the United States, as well as persons physically or mentally defective. If a Chinese alien seeks to enter regularly at a designated port of entry, he is subjected, first, to an examination under the immi-

gration laws, and if found disqualified is refused admission. Rule 3 of the Regulations governing the admission of Chinese (see Appendix, p. 21) expressly provides for their examination under both the immigration and exclusion laws, and further that their status shall *first* be determined under the immigration laws. Under the ruling of the Circuit Court of Appeals, however, if a Chinaman who appears to be a laborer succeeds in having himself smuggled into the country, he must be allowed to remain here, although afflicted with a loathsome or dangerous contagious disease, until his right to remain under the exclusion laws is judicially determined. Thus, by his unlawful entry, he is allowed to imperil the health of the country in a way that he could not do if he had attempted to enter lawfully.

In defense of its decision the Circuit Court of Appeals says (R., 64):

> This conclusion makes no distinction in favor of the Chinese. Chinese laborers are excluded by the Chinese act. All other Chinese persons, not being excluded by that act, are subject to the provisions of the immigration act. A Chinese laborer, with or without a loathsome disease, can not enter at all. The Chinese act governs the case. A Chinese merchant would not be excluded by that act, but would be excluded by the immigration act if he had a loathsome disease or other disability prescribed in such enactment.

The statement of the Circuit Court of Appeals that—

> a Chinese laborer, with or without a loathsome disease, can not enter at all—

is no answer to the Government's position. It is true he can not enter *legally*, but he can and does enter *surreptitiously*, and the point is that under the ruling of the Circuit Court of Appeals, when he does so enter, he must be allowed to remain, although afflicted with a loathsome disease and ultimately subject to deportation under the immigration laws, until the question whether he is a laborer or not is judicially determined.

The Circuit Court of Appeals recognizes the application of the immigration laws to certain Chinese aliens, but holds that they do not apply to Chinese aliens who are laborers and excluded by the Chinese-exclusion laws. The Government, however, is not contending for the right of the Secretary of Commerce and Labor, under the immigration laws, to deport alien Chinese laborers as such, but simply that alien Chinese who have entered the United States without inspection, in violation of the immigration laws, may be deported under the former, if the Government shall so elect, without the necessity of first having it judicially determined whether the exclusion laws are also applicable to them.

The question presented in this case is one of considerable importance in the administration of both

the Chinese-exclusion and the immigration laws. It has been for years past the practice of Chinese aliens to enter the United States surreptitiously from Canada and Mexico. Judicial proceedings for their deportation under the Chinese-exclusion laws are attended with delay and for various reasons are frequently futile.

Once a Chinaman is smuggled in, the claim is made that he is a native-born citizen, and the delay attending judicial proceedings usually enables him to obtain abundant testimony to that effect. Thus, in this case, Wong You, who had admitted before the immigration inspector that he was born in China and that his mother and father were never in the United States (R., 9), asserts in his petition for the writ of habeas corpus that he was born in the United States (R., 1).

Manifestly, Chinese persons surreptitiously entering the United States are entitled to no special consideration, especially as the purpose of such surreptitious entry is to defeat the operation of the immigration as well as the Chinese-exclusion laws.

The construction contended for by the Government does not affect the rights to which Chinese within the United States are properly entitled under the exclusion laws. It merely enables the Governemnt to deal summarily with those entering the country surreptitiously, without inspection, in violation of the immigration laws. Chinamen who

have entered the country in the regular way, and therefore have passed the inspection provided for by the immigration laws, and Chinese who have been here such a length of time as to raise a presumption of lawful entry, must be dealt with under the exclusion laws.

The judgment of the Circuit Court of Appeals should be reversed.

Respectfully submitted.

WILLIAM R. HARR,
Assistant Attorney General.

APPENDIX.

STATUTES AND REGULATIONS.

The provisions of the immigration act of February 20, 1907 (34 Stat., 898), in pursuance of which the warrants of deportation were issued, are as follows:

> SEC. 36. That all aliens who shall enter the United States except at the seaports thereof, or at such place or places as the Secretary of Commerce and Labor may from time to time designate, shall be adjudged to have entered the country unlawfully and shall be deported as provided by sections twenty and twenty-one of this act. * * *
>
> SEC. 20. That any alien who shall enter the United States in violation of law, and such as become public charges from causes existing prior to landing, shall, upon the warrant of the Secretary of Commerce and Labor, be taken into custody and deported to the country whence he came at any time within three years after the date of his entry into the United States. * * *
>
> SEC. 21. That in case the Secretary of Commerce and Labor shall be satisfied that an alien has been found in the United States in violation of this act, or that an alien is subject to deportation under the provisions of this act or of any law of the United States, he shall cause such alien within the period of three years after landing or

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entry therein to be taken into custody and returned to the country whence he came, as provided by section twenty of this act. * * *

SEC. 43. * * * All acts and parts of acts inconsistent with this act are hereby repealed: *Provided,* That this act shall not be construed to repeal, alter, or amend existing laws relating to the immigration or exclusion of Chinese persons or persons of Chinese descent. * * *

Under the provisions of the immigration act, the following rule has been issued by the Department of Commerce and Labor:

RULE 24. *Ports of entry, Canada.*—In accordance with section 36, the following are named as Canadian border ports of entry for aliens; and any alien who enters the United States across such border at any other point shall be deemed to have entered the country unlawfully, and shall be arrested and deported under sections 20, 21, and 35 of said act, in the manner provided by rule 34 hereof: Eastport, Calais, Vanceboro, Fort Kent, Fort Fairfield, Van Buren, Houlton, and Lowelltown, Me.; Beechers Falls, N. H.; Island Pond, Newport, Richford, St. Albans, Swanton, and Alburg, Vt.; Rouses Point, Malone, Fort Covington, Nyando, Ogdensburg, Morristown, Clayton, Cape Vincent, Charlotte, Lewiston, Niagara Falls, and Buffalo, N. Y.; Detroit, St. Clair, Port Huron, and Sault Ste. Marie, Mich.; Duluth, Ranier, International Falls, Warroad, Beaudette, and Noyes, Minn.; Pembina, Neche, Walhalla, Portal, and St. John, N. Dak.; Sweet Grass and Gateway, Mont.; Porthill and Eastport, Idaho; Marcus, Oroville, Sumas, and Blaine, Wash.

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The Chinese-exclusion act of May 6, 1882 (22 Stat., 58), as amended by section 1 of the act of July 5, 1884 (23 Stat., 115), and continued in force by the acts of April 29, 1902 (32 Stat., 176), and April 27, 1904 (33 Stat., 394, 428), provides that:

> * * * It shall not be lawful for any Chinese laborer to come from any foreign port or place, or having so come to remain within the United States.

Section 12 of the act of May 6, 1882 (22 Stat., 58), as amended by the act of July 5, 1884 (23 Stat., 115), provides:

> That no Chinese person shall be permitted to enter the United States by land without producing to the proper customs officer [Chinese inspector] the certificate in this act required of Chinese persons seeking to land from a vessel.
>
> And any Chinese person found unlawfully within the United States shall be caused to be removed therefrom to the country from whence he came, and at the cost of the United States, after being brought before some justice, judge, or commissioner of a court of the United States and found to be one not lawfully entitled to be or to remain in the United States. * * *

Section 7 of the act of September 13, 1888 (25 Stat., 477), reenacted by the acts of April 29, 1902 (32 Stat., 176), and April 27, 1904 (33 Stat., 394, 428), provides:

> * * * And no Chinese laborer shall be permitted to reenter the United States without producing to the proper officer of the customs [proper officer in charge] at the port of such entry the return certificate herein required. A Chinese laborer pos-

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> sessing a certificate under this section shall be admitted to the United States only at the port from which he departed therefrom, and no Chinese person, except Chinese diplomatic or consular officers, and their attendants, shall be permitted to enter the United States except at the ports of San Francisco, Portland, Oregon, Boston, New York, New Orleans, Port Townsend, or such other ports as may be designated by the Secretary of the Treasury [Commerce and Labor].

Section 13 of said act of 1888, likewise reenacted by the above-mentioned acts of 1902 and 1904, provides:

> That any Chinese person, or person of Chinese descent, found unlawfully in the United States, or its Territories, may be arrested upon a warrant issued upon a complaint, under oath, filed by any party on behalf of the United States, by any justice, judge, or commissioner of any United States court, returnable before any justice, judge, or commissioner of a United States court or before any United States court, and when convicted, upon a hearing, and found and adjudged to be one not lawfully entitled to be or remain in the United States, such person shall be removed from the United States to the country whence he came. * * *

The following rules have been issued by the Department of Commerce and Labor governing the admission of Chinese.

> RULE 1. No Chinese person, other than a Chinese diplomatic or consular officer and attendants, shall be permitted to enter the United States elsewhere than at the ports of San Francisco, Cal.; Portland, Oreg.; Bos-

ton, Mass.; New York, N. Y.; New Orleans, La.; Port Townsend and Seattle, Wash.; Honolulu, Hawaii; San Juan and Ponce, P. R.; San Diego, Cal.; and Tampa, Fla.

RULE 3. Chinese aliens shall be examined as to their right to admission to the United States under the provisions of the law regulating immigration as well as under the laws relating to the exclusion of Chinese. As the immigration act relates to aliens in general, the status of Chinese applying for admission must *first* be determined in accordance with the terms of that law and of the regulations drawn in pursuance thereof; then, if found admissible under such law and regulations, their status under the Chinese-exclusion laws and regulations shall be determined. In order to avoid inconvenience, delay, or annoyance to Chinese applicants arising through misunderstanding, and in the interest of good administration, examination under both sets of laws and regulations shall be made, in the order stated, only at the ports named in rule 1 hereof.

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UNITED STATES *v.* WONG YOU.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 597. Argued January 12, 1912.—Decided January 22, 1912.

The Alien Immigration Act of February 20, 1907, c. 1134, § 36, 34 Stat. 898, 908, applies to Chinese laborers illegally coming to this country notwithstanding the special acts relating to the exclusion of Chinese.

To allow a subsequent general act its literal effect does not repeal, alter, or amend an earlier special law when the later law expressly provides that it shall not have that effect.

The omission from a later act of a clause contained in an earlier act on the same subject, excluding certain classes from its operation,

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and inserting a provision applicable to such classes, signifies that Congress intended to include that class in the operation of the later act, notwithstanding the existence of other special legislation in regard thereto.

181 Fed. Rep. 313; 104 C. C. A. 535, reversed.

THE facts, which involve the construction of § 36 of the Alien Immigration Act of 1907 are stated in the opinion.

Mr. Assistant Attorney General Harr for the United States:

The application of the immigration laws to Chinese aliens is well settled. The immigration act of March 3, 1893, 27 Stat. 569, 571, provided: "That this act *shall not apply* to Chinese persons." But in the immigration act of March 3, 1903, 32 Stat. 1213, 1221, § 36, and in the act of February 20, 1907, 34 Stat. 898, 911, this clause was changed so as to read: "That this act shall not be construed to repeal, alter, or amend existing laws relating to the immigration or exclusion of Chinese persons or persons of Chinese descent." This change indicates the intent of Congress that the immigration act should apply to Chinese aliens, although not affecting the operation of the exclusion laws, and such has been the practical and judicial construction of this legislation.

In the opinion rendered June 24, 1903, Attorney General Knox held that the Alien Immigration Act of March 3, 1903, authorized the exclusion of a Chinese alien afflicted with a dangerous and contagious disease. 24 Op. Atty. Gen. 706, 708.

This view has been uniformly followed by the executive department and the courts. *Ex parte Lee Shee Wing*, 164 Fed. Rep. 506; *Looe Shee* v. *North*, 170 Fed. Rep. 566; *Ex parte Li Dick*, 174 Fed. Rep; 674; *S. C.*, 176 Fed. Rep. 998; *Haw Moy* v. *North*, 183 Fed. Rep. 89.

No appearance for respondents.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a writ of habeas corpus. It was dismissed by the District Court, 176 Fed. Rep. 933, but was sustained by the Circuit Court of Appeals, which ordered the parties concerned to be discharged from custody. 181 Fed. Rep. 313. 104 C. C. A. 535. The parties are Chinamen who entered the United States surreptitiously, in a manner prohibited by the immigration act of February 20, 1907, c. 1134, § 36, 34 Stat. 898, 908, and the rules made in pursuance of the same, if applicable to Chinese. They were arrested *in transitu* and ordered by the Secretary of Commerce and Labor to be deported. §§ 20, 21. But as it transpired in the evidence that they were laborers, the Circuit Court of Appeals held that they could be dealt with only under the Chinese exclusion acts of earlier date. Those acts make it unlawful for any Chinese laborer to come from any foreign place into the United States, or, having so come, to remain there, and provide a different procedure for removing them. Hence it was concluded that such persons were tacitly excepted from the general provisions of the immigration act, although broad enough to include them and although of later date.

We are of opinion that the Circuit Court of Appeals made a mistaken use of its principles of interpretation. By the language of the act any alien that enters the country unlawfully may be summarily deported by order of the Secretary of Commerce and Labor at any time within three years. It seems to us unwarranted to except the Chinese from this liability because there is an earlier more cumbrous proceeding which this partially overlaps. The existence of the earlier laws only indicates the special solicitude of the Government to limit the entrance of Chinese. It is the very reverse of a reason for denying to the Government a better remedy against them alone of all the world, now that one has been created in general terms.

To allow the immigration act its literal effect does not repeal, alter, or amend the laws relating to the Chinese, as it is provided that it shall not, in § 43. The present act does not contain the clause found in the previous immigration act of March 3, 1893, 27 Stat. 569, c. 206, that it shall not apply to Chinese persons, and, on the other hand, as it requires deportation to the trans-Pacific ports from which such aliens embarked for the United States, § 35, it is rather hard to say that it has not the Chinese specially in mind.

Judgment reversed.